Subpart K—Selective Enforcement Auditing of New Heavy-Duty Engines, Heavy-Duty Vehicles, and Light-Duty Trucks

SOURCE: 45 FR 63772, Sept. 25, 1980, unless otherwise noted.

§86.1001–84 Applicability.

The provisions of this subpart are applicable for 1984 and later model year heavy-duty engines and light-duty trucks.

(a) *Section numbering; construction.* (1) The model year of initial applicability is indicated by the two digits following the hyphen of the section number. A section remains in effect for subsequent model years until it is superseded.

(2) A section reference without a model year suffix shall be interpreted to be a reference to the section applicable to the appropriate model year.

(b) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of subpart S of this part.

[54 FR 14559, Apr. 11, 1989, as amended at 62 FR 31238, June 6, 1997; 64 FR 23922, May 4, 1999]

§86.1002–84 Definitions.

(a) The definitions in this section apply to this subpart.

(b) As used in this subpart, all terms not defined herein have the meaning given them in the Act.

Acceptable Quality Level (AQL) means the maximum percentage of failing engines or vehicles, that for purposes of sampling inspection, can be considered satisfactory as a process average.

Configuration means a subclassification, if any, of a heavy-duty engine family for which a separate projected sales figure is listed in the manufacturer's Application for Certification and which can be described on the basis of emission control system, governed speed, injector size, engine calibration, and other parameters which may be designated by the Administrator, or a subclassification of a light-duty truck engine family/emission control system combination on the basis of engine code, inertia weight class, transmission type and gear ratios, axle ratio, and other parameters which may be designated by the Administrator.

Compliance level means an emission level determined during a Production Compliance Audit pursuant to subpart L of this part.

Test Sample means the collection of vehicles or engines of the same configuration which have been drawn from the population of engines or vehicles of that configuration and which will receive exhaust emission testing.

Inspection Criteria means the pass and fail numbers associated with a particular sampling plan.

Test Engine means an engine in a test sample.

Test Vehicle means a vehicle in a test sample.

[45 FR 63772, Sept. 25, 1980, as amended at 48 FR 52207, Nov. 16, 1983; 50 FR 35386, Aug. 30, 1985]

§86.1002–97 Definitions.

(a) The definitions in this section apply to this subpart.

(b) As used in this subpart, all terms not defined in this section have the meaning given them in the Act.

Acceptable quality level (AQL) means the maximum percentage of failing engines or vehicles, that for purposes of sampling inspection, can be considered satisfactory as a process average.

Axle ratio means all ratios within ±3% of the axle ratio specified in the configuration in the test order.

Compliance level means an emission level determined during a Production Compliance Audit pursuant to subpart L of this part.

Configuration means a subclassification, if any, of a heavy-duty engine family for which a separate projected sales figure is listed in the manufacturer's Application for Certification and which can be described on the basis of emission control system, governed speed, injector size, engine calibration, and other parameters which may be designated by the Administrator, or a subclassification of a light-duty truck engine family/emission control system combination on the basis of engine

code, inertia weight class, transmission type and gear rations, axle ratio, and other parameters which may be designated by the Administrator.

Executive Officer means the Executive Officer of the California Air Resources Board or his or her authorized representative.

Executive Order means the document the Executive Officer grants a manufacturer for an engine family that certifies the manufacturer has verified the engine family complies with all applicable standards and requirements pursuant to Title 13 of the California Code of Regulations.

50-state engine family means an engine family that meets both federal and California Air Resources Board motor vehicle emission control regulations and has received a federal certificate of conformity as well as an Executive Order.

Inspection criteria means the pass and fail numbers associated with a particular sampling plan.

Test engine means an engine in a test sample.

Test sample means the collection of vehicles or engines of the same configuration which have been drawn from the population of engines or vehicles of that configuration and which will receive exhaust emission testing.

Test vehicle means a vehicle in a test sample.

[62 FR 31238, June 6, 1997]

§ 86.1002–2001 Definitions.

(a) The definitions in this section apply to this subpart.

(b) As used in this subpart, all terms not defined in this section have the meaning given them in the Act.

(1) *Acceptable quality level* (AQL) means the maximum percentage of failing engines or vehicles, that for purposes of sampling inspection, can be considered satisfactory as a process average.

(2) *Compliance level* means an emission level determined during a Production Compliance Audit pursuant to subpart L of this part.

(3) *Configuration* means a subclassification, if any, of a heavy-duty engine family for which a separate projected sales figure is listed in the manufacturer's Application for Certification and which can be described on the basis of emission control system, governed speed, injector size, engine calibration and other parameters which may be designated by the Administrator, or for light-duty trucks a subclassification of a light-duty truck engine family/emission control system combination on the basis of engine code, inertia weight class, transmission type and gear ratios, axle ratio, and other parameters which may be designated by the Administrator and/or a subclassification of a light-duty truck evaporative/refueling emission family/emission control system.

(4) *Test sample* means the collection of vehicles or engines of the same configuration which have been drawn from the population of vehicles or engines of that configuration and which will receive emission testing.

(5) *Inspection criteria* means the pass and fail numbers associated with a particular sampling plan.

(6) *Test engine* means an engine in a test sample.

(7) *Test vehicle* means a vehicle in a test sample.

(8) *Axle ratio* means all ratios within ±3% of the axle ratio specified in the configuration in the test order.

(9) *Executive Officer* means the Executive Officer of the California Air Resources Board or his or her authorized representative.

(10) *Executive Order* means the document the Executive Officer grants a manufacturer for an engine family that certifies the manufacturer has verified the engine family complies with all applicable standards and requirements pursuant to Title 13 of the California Code of Regulations.

(11) *50-state engine family* means an engine family that meets both federal and California Air Resources Board motor vehicle emission control regulations and has received a federal certificate of conformity as well as an Executive Order.

[59 FR 16304, Apr. 6, 1994, as amended at 62 FR 31238, June 6, 1997]

§ 86.1003–90 Test orders.

(a) The Administrator shall require any testing under this subpart by means of a test order addressed to the manufacturer.

(b) The test order will be signed by the Assistant Administrator for Air and Radiation or his designee. The test order will be delivered in person by an EPA Enforcement Officer to a company representative or sent by registered mail, return receipt requested, to the manufacturer's representative who signs the Application for Certification submitted by the manufacturer pursuant to the requirements of this applicable section of subpart A of this part. Upon receipt of a test order, the manufacturer shall comply with all of the provisions of this subpart and instructions in the test order.

(c)(1) The test order will specify the engine or vehicle configuration selected for testing, the manufacturer's vehicle or engine assembly plant or associated storage facility from which the engines or vehicles must be selected, the time and location at which engines or vehicles must be selected, and the procedure by which engines or vehicles of the specified configuration must be selected. The test order may specify the number of vehicles or engines to be selected per day.

(i) If the total production of the specified vehicle configuration is less than the number specified in the test order, the manufacturer will select the actual number of vehicles produced per day.

(ii) Heavy-duty engine manufacturers will be required to select a minimum of four engines per day unless an alternate selection procedure is approved pursuant to §86.1007–84(a) or unless total production of the specified configuration is less than four engines per day. If total production of the specified configuration is less than four engines per day, the manufacturer will select the actual number of engines produced that day.

(2) The test order may include alternative configurations to be selected for testing in the event that engines or vehicles of the specified configuration are not available for testing because those engines or vehicles are not being manufactured during the specified time, or not being stored at the specified assembly plant or associated storage facilities.

(3) If the specified configuration is not being manufactured at a rate of at least four vehicles per day, in the case of light-duty truck manufacturers, two engines per day, in the case of heavy-duty engine manufacturers specified in paragraph (g)(1) of §86.1008–84 or one engine per day, in the case of heavy-duty engine manufacturers specified in paragraph (g)(2) of §86.1008–90, over the expected duration of the audit, the Assistant Administrator or his designated representative may select engines or vehicles of the alternate configuration for testing.

(4) In addition, the test order may include other directions or information essential to the administration of the required testing.

(d) A manufacturer may submit a list of engine families and the corresponding assembly plants or associated storage facilities from which the manufacturer prefers to have engines or vehicles selected for testing or response to a test order. In order that a manufacturer's preferred location be considered for inclusion in a test order for a configuration of a particular engine family, the list must be submitted prior to issuance of the test order. Notwithstanding the fact that a manufacturer has submitted the above list, the Administrator may order selection at other than a preferred location.

(e) Upon receipt of a test order, a manufacturer shall proceed in accordance with the provisions of this subpart.

(f)(1) During a given model year, the Administrator shall not issue to a manufacturer more Selective Enforcement Audit (SEA) test orders than an annual limit determined by the following:

(i) For manufacturers of heavy-duty engines, either petroleum-fueled or methanol-fueled, the number determined by dividing the projected heavy-duty engine sales bound for the United States market for that year, as made by the manufacturer in its Application for Certification, by 30,000 and rounding to the nearest whole number, unless the projected sales are less than 15,000, in which case the number is one;

(ii) For manufacturers of petroleum-fueled or methanol-fueled light-duty trucks, the number determined by dividing the projected light-duty truck sales bound for the United States market for that model year, as made by

the manufacturer in its report submitted under paragraph (a)(2) of §600.207–80 of the Automobile Fuel Economy Regulations, by 300,000 and rounding to the nearest whole number, unless the projected sales are less than 150,000, in which case the number is one.

(iii) If a manufacturer submits to EPA in writing prior to or during the model year a reliable sales projection update, that update will be used for recalculating the manufacturer's annual limit of SEA test orders.

(2) Any SEA test order for which the configuration fails in accordance with §86.1010 or for which testing is not completed will not be counted against the annual limit.

(3) When the annual limit has been met, the Administrator may issue additional test orders for those configurations for which evidence exists indicating noncompliance. An SEA test order issued on this basis will include a statement as to the reason for its issuance.

[54 FR 14559, Apr. 11, 1989]

§86.1003–97 Test orders.

Section 86.1003–97 includes text that specifies requirements that differ from those specified in §86.1003–90. Where a paragraph in §86.1003–90 is identical and applicable to §86.1003–97, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see §86.1003–90.''

(a) through (f) [Reserved]. For guidance see §86.1003–90.

(g) In the event evidence exists indicating an engine family is in noncompliance, the Administrator may, in addition to other powers provided by this section, issue a test order specifying the engine family the manufacturer is required to test.

[62 FR 31238, June 6, 1997]

§86.1003–2001 Test orders.

Section 86.1003–2001 includes text that specifies requirements that differ from §86.1003–88. Where a paragraph in §86.1003–88 is identical and applicable to §86.1003–2001, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see §86.1003–88.'' Where a corresponding paragraph of §86.1003–88 is not applicable, this is indicated by the statement ''[Reserved].''.

(a) through (c)(1)(ii) [Reserved]. For guidance see §86.1003–88.

(c)(1)(iii) Heavy-duty vehicle manufacturers will be required to select a minimum of four vehicles per day unless an alternate selection procedure is approved pursuant to §86.1007–84(a) or unless total production of the specified configuration is less than four vehicles per day. If total production of the specified configuration is less than four vehicles per day, the manufacturer will select the actual number of vehicles produced per day.

(2) The test order may include alternative configurations to be selected for testing in the event that engines or vehicles of the specified configuration are not available for testing because those engines or vehicles are not being manufactured during the specified time, or not being stored at the specified assembly plant or associated storage facilities.

(3) If the specified configuration is not being manufactured at a rate of at least four vehicles per day, in the case of light-duty truck manufacturers, two heavy-duty engines or heavy-duty vehicles, in the case of heavy-duty vehicle and heavy-duty engine manufacturers specified in §86.1008–2001(g)(1), or one engine or heavy-duty vehicle per day, in the case of heavy-duty vehicle or engine manufacturers specified in §86.1008–2001(g)(2), over the expected duration of the audit, the Assistant Administrator or a designated representative may select engines or vehicles of an alternate configuration for testing.

(4) In addition, the test order may include other directions or information essential to the administration of the required testing.

(d) A manufacturer may submit a list of engine families and, if applicable, evaporative/refueling families and the corresponding assembly plants or associated storage facilities from which the manufacturer prefers to have engines or vehicles selected for testing in response to a test order. In order that a manufacturer's preferred location be considered for inclusion in a test order

for a configuration of a particular engine family and/or evaporative/refueling family, the list must be submitted prior to issuance of the test order. Notwithstanding the fact that a manufacturer has submitted the above list, the Administrator may, upon making the determination that evidence exists indicating noncompliance at other than the manufacturer's preferred plant, order testing at such other plant where vehicles of the configuration specified in the test order are assembled.

(e) Upon receipt of a test order, a manufacturer shall proceed in accordance with the provisions of this subpart.

(f)(1) During a given model year, the Administrator shall not issue to a manufacturer more Selective Enforcement Auditing (SEA) test orders than the annual limit determined by the following:

(i) For manufacturers of heavy-duty engines or vehicles, either gasoline-fueled or diesel, the number determined by dividing the projected sales bound for the United States market for that year, as made by the manufacturer in its Application for Certification, by 30,000 and rounded to the nearest whole number, unless the projected sales are less than 15,000, in which case the number is one;

(f)(1)(ii) through (f)(3) [Reserved]. For guidance see §86.1003–88.

(g) In the event evidence exists indicating an engine family is in noncompliance, the Administrator may, in addition to other powers provided by this section, issue a test order specifying the engine family the manufacturer is required to test.

[59 FR 16305, Apr. 6, 1994, as amended at 62 FR 31238, June 6, 1997]

§86.1004–84 Testing by the Administrator.

(a) The Administrator may require by test order that engines or vehicles of a specified configuration be selected in a manner consistent with the requirements of §86.1007–84 and submitted to him at such place as he may designate for the purpose of conducting emission tests. These tests will be conducted in accordance with §86.1008–84 of these regulations to determine whether engines or vehicles manufactured by the manufacturer conform with the regulations with respect to which the certificate of conformity was issued.

(b)(1) Whenever the Administrator conducts a test on a test engine or vehicle or the Administrator and manufacturer each conduct a test on the same test engine or vehicle, the results of the Administrator's test will comprise the official data for that engine or vehicle.

(2) Whenever the manufacturer conducts all tests on a test engine or vehicle, the manufacturer's test data will be accepted as the official data: *Provided,* That if the Administrator makes a determination based on testing under paragraph (a) of this section that there is a substantial lack of agreement between the manufacturer's test results and the Administrator's test results, no manufacturer's test data from the manufacturer's test facility will be accepted for purposes of this subpart.

(c) If testing conducted under paragraph (a) of this section demonstrates a lack of agreement under paragraph (b)(2) of this section, the Administrator shall:

(1) Notify the manufacturer in writing of his determination that the test facility is inappropriate for conducting the tests required by this subpart and the reasons therefor; and

(2) Reinstate any manufacturer's data upon a showing by the manufacturer that the data acquired under paragraph (a) of this section was erroneous and the manufacturer's data was correct.

(d) The manufacturer may request in writing that the Administrator reconsider his determination in paragraph (b)(2) of this section based on data or information which indicates that changes have been made to the test facility and these changes have resolved the reasons for disqualification.

§86.1005–90 Maintenance of records; submittal of information.

(a) The manufacturer of any new petroleum-fueled or methanol-fueled heavy-duty engine or light-duty truck subject to any of the provisions of this subpart shall establish, maintain, and retain the following adequately organized and indexed records:

(1) *General records.* A description of all equipment used to test engines or vehicles in accordance with § 86.1008 pursuant to a test order issued under this subpart, specifically:

(i) If testing heavy-duty gasoline-fueled or methanol-fueled Otto-cycle engines, the equipment requirements specified in §§ 86.1306 and 86.1506 of this part;

(ii) If testing heavy-duty petroleum-fueled or methanol-fueled diesel engines, the equipment requirements specified in §§ 86.1306–84, 86.884–8, and 86.884–9 of this part;

(iii) If testing gasoline-fueled or methanol-fueled Ottocycle light-duty trucks, the equipment requirements specified in § 86.106 (excluding all references to evaporative and particulate emission testing), § 86.206, and § 86.1506–84 of this subpart; and

(iv) If testing petroleum-fueled or methanol-fueled diesel light-duty trucks, the equipment requirements specified in §§ 86.106 (excluding all references to evaporative emission testing) and 86.1506–83 of this part.

(2) *Individual records.* These records pertain to each audit conducted pursuant to this subpart.

(i) The date, time, and location of each test;

(ii) The number of hours of service accumulated on each engine or the number of miles on the vehicle when the test began and ended;

(iii) The names of all supervisory personnel involved in the conduct of the audit;

(iv) A record and description of any repairs performed prior to and/or subsequent to approval by the Administrator, giving the date and time of the repair, the reason for it, the person authorizing it, and the names of all supervisory personnel responsible for the conduct of the repair;

(v) The date when the engine or vehicle was shipped from the assembly plant or associated storage facility and when it was received at the testing facility;

(vi) A complete record of all emission tests performed pursuant to this subpart (except tests performed by EPA directly), including all individual worksheets and/or other documentation relating to each test, or exact copies thereof, specifically

(A) If testing gasoline-fueled or methanol-fueled Otto-cycle heavy-duty engines, the record requirements specified in §§ 86.1342 and 86.1542 of this part;

(B) If testing petroleum-fueled or methanol-fueled diesel heavy-duty engines, the record requirements specified in §§ 86.1342, 86.1542, and 86.884–10;

(C) If testing gasoline-fueled or methanol-fueled Ottocycle light-duty trucks, the record requirements specified in § 86.142 (excluding all references to diesel vehicles), § 86.242, and § 86.1542; and

(D) If testing petroleum-fueled or methanol-fueled diesel light-duty trucks, the record requirements specified in § 86.142; and

(vii) A brief description of any significant audit events commencing with the test engine or vehicle selection process, but not described by any subparagraph under paragraph (a)(2) of this section, including such extraordinary events as engine damage during shipment or vehicle accident.

(viii) A paper copy of the driver's trace for each test.

(3) The manufacturer shall record test equipment description, pursuant to paragraph (a)(1) of this section, for each test cell that can be used to perform emission testing under this subpart.

(b) The manufacturer shall retain all records required to be maintained under this subpart for a period of one (1) year after completion of all testing in response to a test order. Records may be retained as hard copy or reduced to microfilm, punch cards, etc., depending upon the manufacturer's record retention procedure: *Provided,* that in every case all information contained in the hard copy is retained.

(c) Pursuant to a request made by the Administrator, the manufacturer shall submit to him the following information with regard to engine or vehicle production:

(1) Number of engines or vehicles, by configuration and assembly plant, scheduled for production for the time period designated in the request.

(2) Number of engines or vehicles, by configuration and assembly plan, produced during the time period designated in the request which are complete form introduction into commerce.

(d) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(e) The manufacturer shall address all reports, submissions, notifications, and requests for approvals made under this subpart to: Director, Manufacturers Operations Division, U.S. Environmental Protection Agency, EN–340, 401 M Street, SW., Washington, DC 20460.

[54 FR 14560, Apr. 11, 1989, as amended at 57 FR 31922, July 17, 1992]

§ 86.1006–84 Entry and access.

(a) To allow the Administrator to determine whether a manufacturer is complying with the provisions of this subpart and a test order issued thereunder, EPA Enforcement Officers are authorized to enter during operating hours and upon presentation of credentials any of the following:

(1) Any facility where any engine or vehicle to be introduced into commerce or any emission related component is manufactured, assembled, or stored;

(2) Any facility where any tests conducted pursuant to a test order or any procedures or activities connected with these tests are or were performed;

(3) Any facility where any engine or vehicle which is being tested, was tested, or will be tested is present; and

(4) Any facility where any record or other document relating to any of the above is located.

(b) Upon admission to any facility referred to in paragraph (a) of this section, EPA Enforcement Officers are authorized to perform the following inspection-related activities:

(1) To inspect and monitor any aspects of engine or vehicle manufacture, assembly, storage, testing and other procedures, and the facilities in which these procedures are conducted;

(2) To inspect and monitor any aspect of engine or vehicle test procedures or activities, including, but not limited to, monitoring engine or vehicle selection, preparation, service or mileage accumulation, preconditioning, emission test cycles, and maintenance; and to verify calibration of test equipment;

(3) To inspect and make copies of any records or documents related to the assembly, storage, selection and testing of an engine or vehicle in compliance with a test order; and

(4) To inspect and photograph any part or aspect of any engine or vehicle and any component used in the assembly thereof that is reasonably related to the purpose of the entry.

(c) EPA Enforcement Officers are authorized to obtain reasonable assistance without cost from those in charge of a facility to help them perform any function listed in this subpart and are authorized to request the recipient of a test order to make arrangements with those in charge of a facility operated for its benefit to furnish reasonable assistance without cost to EPA whether or not the recipient controls the facility.

(d) EPA Enforcement Officers are authorized to seek a warrant or court order authorizing the EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section, as appropriate, to execute the functions specified in this section. EPA Enforcement Officers may proceed *ex parte* to obtain a warrant whether or not the Enforcement Officers first attempted to seek permission of the recipient of the test order or the party in charge of the facilities in question to conduct activities related to entry and access as authorized in this section.

(e) A recipient of a test order shall permit EPA Enforcement Officers who present a warrant or court order as described in paragraph (d) of this section to conduct activities related to entry and access as authorized in this section and as described in the warrant or court order. The recipient shall cause those in charge of its facility or a facility operated for its benefit to permit EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section pursuant to a warrant or court order whether or not the recipient controls the facility. In the absence of such a warrant or court order, EPA Enforcement Officers may conduct activities related to entry

and access as authorized in this section only upon the consent of the recipient of the test order or the party in charge of the facilities in question.

(f) It is not a violation of this part or the Clean Air Act for any person to refuse to permit EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section without a warrant or court order.

(g) A manufacturer is responsible for locating its foreign testing and manufacturing facilities in jurisdictions in which local foreign law does not prohibit EPA Enforcement Officers from conducting the entry and access activities specified in this section. EPA will not attempt to make any inspections which it has been informed that local foreign law prohibits.

(h) For purposes of this section, the following definitions are applicable:

(1) *Presentation of Credentials* means display of the document designating a person as an EPA Enforcement Officer.

(2) Where engine or vehicle storage areas or facilities are concerned, *operating hours* means all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those covered by paragraph (h)(2) of this section are concerned, *operating hours* means all times during which an assembly line is in operation, engine or vehicle assembly is taking place, testing, repair, service accumulation, production or compilation of records is taking place, or any other procedure or activity related to engine or vehicle manufacture, assembly or testing is being carried out in a facility.

(4) *Reasonable assistance* includes, but is not limited to, clerical, copying, interpreting and translating services, and the making available on an EPA Enforcement Officer's request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer of how the facility operates and to answer his or her questions. Any employee whom an EPA Enforcement Officer requests the manufacturer to cause to appear for questioning will be entitled to be accompanied, represented and advised by counsel.

[45 FR 63772, Sept. 25, 1980, as amended at 48 FR 52208, Nov. 16, 1983]

§ 86.1007–84 Sample selection.

(a) Engines or vehicles comprising a test sample which are required to be tested, pursuant to a test order issued in accordance with this subpart, will be selected at the location and in the manner specified in the test order. If a manufacturer determines that the test engines or vehicles cannot be selected in the manner specified in the test order, an alternative selection procedure may be employed: *Provided,* That the manufacturer requests approval of the alternative procedure in advance of the start of test sample selection and that the Administrator approves the procedure.

(b) The manufacturer shall have assembled the test engines or vehicles of the configuration selected for testing using its normal mass production process for engines or vehicles to be distributed into commerce. During the audit, the manufacturer shall inform the Administrator of any change(s) implemented in its production processes, including quality control, which may reasonably be expected to affect the emissions of the vehicles or engines selected, between the time the manufacturer is notified of a test order and the time the manufacturer finishes selecting test vehicles or engines. In the case of heavy-duty engines, if the test engines are selected at a location where they do not have their operational and emission control systems installed, the test order will specify the manner and location for selection of components to complete assembly of the engines. The manufacturer shall assemble these components onto the test engines using normal assembly and quality control procedures as documented by the manufacturer.

(c) No quality control, testing, or assembly procedures will be used on the completed test engine or vehicle or any portion thereof, including parts and subassemblies, that has not been or will not be used during the production and assembly of all other engines or vehicles of that configuration, except, that the Administrator may approve a

modification in the normal assembly procedures pursuant to paragraph (b) of this section.

(d) The test order may specify that EPA Enforcement Officers, rather than the manufacturer, will select the test engines or vehicles according to the method specified in the test order.

(e) The order in which test engines or vehicles are selected determines the order in which test results are to be used in applying the sampling plan in accordance with §86.1010–84.

(f) The manufacturer shall keep on hand all untested engines or vehicles, if any, comprising the test sample until such time as a pass or fail decision is reached in accordance with §86.1010–84(d). The manufacturer may ship any tested engine or vehicle which has not failed in accordance with §86.1010–84(b). However, once the manufacturer ships any test engine or vehicle, it relinquishes the prerogative to conduct retests as provided in §86.1008–84(i).

[45 FR 63772, Sept. 25, 1980, as amended at 48 FR 52208, Nov. 16, 1983]

§86.1008–90 Test procedures.

(a)(1)(i) For heavy-duty engines, the prescribed test procedure is the Federal Test Procedure, as described in subparts N, I, and P of this part.

(ii) For heavy-duty vehicles with a GVW of less than 14,000 pounds (6,400 kilograms), the prescribed test procedure is the Fuel Dispensing Spitback Test as described in 86.1246–96 of this part. The test for fuel spitback is conducted as a stand-alone test, thus all references to the test sequence described in figure M96–1 of subpart M of this part can be ignored.

(iii) During the testing of heavy-duty diesel engines, the manufacturer shall decide for each engine, prior to the start of the initial cold cycle, whether the measurement of background particulate is required for the cold and hot cycles to be valid. The manufacturer may choose to have different requirements for the cold and hot cycles. If a manufacturer chooses to require the measurement of background particulate, failure to measure background particulate shall void the test cycle regardless of the test results. If a test cycle is void, the manufacturer shall retest using the same validity requirements of the initial test.

(2) For light-duty trucks, the prescribed test procedure is the Federal Test Procedure as described in subparts B, P, and/or C of this part. The manufacturer shall not perform the evaporative emission test procedures contained in subpart B of this part. The Administrator may, based on advance application by a manufacturer, approve optional test procedures for use in Selective Enforcement Audit testing.

(3) When testing light-duty trucks the following exceptions to the test procedures in subpart B are applicable:

(i) For mileage accumulation, the manufacturer may use test fuel meeting the specifications of mileage and service accumulation fuels of §86.113. Otherwise, the manufacturer may use fuels other than those specified in this section only with the advance approval of the Administrator.

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in §86.131–96(a) with only a single temperature sensor, and may drain the test fuel from other than the lowest point of the tank, as specified in §86.131–96(b), provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturers and shall be made available to the Administrator upon request.

(iii) The manufacturer may perform additional preconditioning on SEA test vehicles other than the preconditioning specified in §86.132 only if the additional preconditioning had been performed on certification test vehicles of the same configuration.

(iv) If the Administrator elects to use the evaporative canister preconditioning procedure described in §86.132–96(k), the manufacturer shall perform the heat build procedure 11 to 34 hours following vehicle preconditioning rather than according to the time period specified in §86.133–90(a). All references in §86.133–90 to an evaporative emission enclosure (SHED) and analyzing for HC during the heat build can be ignored.

(v) The manufacturer may substitute slave tires for the drive wheel tires on the vehicle as specified in paragraph (e)

of §86.135–90: *Provided*, that the slave tires are the same size.

(vi) If the Administrator elects to use the evaporative canister preconditioning procedure described in §86.132–96(k), the cold start exhaust test described in §86.137 shall follow the heat build procedure described in §86.133–90 by not more than one hour.

(vii) In performing exhaust sample analysis under §86.140.

(A) When testing diesel vehicles or methanol-fueled vehicles, the manufacturer shall allow a minimum of 20 minutes warm-up for the HC analyzer, and a minimum of 2 hours warm-up for the CO, CO_2 and NO_X analyzers. (Power is normally left on infrared and chemiluminescent analyzers. When not in use, the chopper motors of the infrared analyzers are turned off and the phototube high voltage supply to the chemiluminescent analyzers is placed in the standby position.)

(B) The manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(viii) The manufacturer need not comply with §86.142, since the records required therein are provided under other provisions of subpart K of this part.

(ix) In addition to the requirements of subpart B of this part, the manufacturer shall prepare gasoline-fueled vehicles and methanol-fueled vehicles as follows prior to exhaust emission testing:

(A) The manufacturer shall inspect the fuel system to insure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5 = 0.5 inches of water to the fuel system, allowing the pressure to stabilize, and isolating the fuel system from the pressure source. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water in five minutes. If required, the manufacturer shall perform corrective action in accordance with §86.1008 and report this action in accordance with §86.1009.

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative emission control system.

(C) The manufacturer shall not modify the test vehicle's evaporative emission control system by component addition, deletion, or substitution, except to comply with paragraph (a)(4)(ii) of this section if approved in advance by the Administrator.

(4) The Administrator, may on the basis of a written application by a manufacturer, prescribe minor test procedure variations from those set forth in paragraphs (a)(1) and (a)(2) of this section for any heavy-duty engine.

(5) When testing light-duty trucks, the following exceptions to the test procedures in subpart C of this part are applicable:

(i) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank as specified in §86.231(a) and may drain the test fuel from other than the lowest point of the fuel tank as specified in §86.231(b) provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(ii) In performing exhaust sample analysis under §86.240, the manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(iii) The manufacturer need not comply with §86.242 since the records required therein are provided under other provisions of subpart K of this part.

(iv) In addition to the requirements of subpart C of this part, the manufacturer shall prepare gasoline-fueled vehicles as follows prior to exhaust emission testing.

(A) The manufacturer shall inspect the fuel system to ensure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5±0.5 inches of water (3.6±0.1 kPa) in the fuel system allowing the pressure to stabilize and isolating the fuel system from the pressure sources. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water (0.5 kPa) in 5 minutes. If required, the manufacturer shall perform corrective action in accordance with paragraph §86.1008(d) and report this action in accordance with paragraph §86.1009(d).

(B) When performing this pressure check, the manufacturer shall exercise

care to neither purge nor load the evaporative emission control system.

(C) The manufacturer shall not modify the test vehicle's evaporative emission control system by component addition, deletion, or substitution, except if approved in advance by the Administrator to comply with paragraph (a)(5)(i) of this section.

(b)(1) The manufacturer shall not adjust, repair, prepare, or modify the engines or vehicles selected for testing and shall not perform any emission tests on engines or vehicles selected for testing and shall not perform any emission tests on engines or vehicles selected for testing pursuant to the test order unless this adjustment, repair, preparation, modification, and/or tests are documented in the manufacturer's engine or vehicle assembly and inspection procedures and are actually performed or unless these adjustments and/or test are required or permitted under this subpart or are approved in advance by the Administrator.

(2) For 1984 and later model years the Administrator may adjust or cause to be adjusted any engine parameter which the Administrator has determined to be subject to adjustment for certification, Selective Enforcement Audit, and Production Compliance Audit testing in accordance with §86.090–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with §86.090–22(e)(3)(ii), prior to the performance of any tests. However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to any setting which causes a lower engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter if the manufacturer had accumulated 125 hours of service on the engine or 4,000 miles on the vehicle under paragraph (c) of this section, all other parameters being identically adjusted for the purpose of the comparison. The manufacturer may be requested to supply information to establish such an alternative minimum idle speed. The Administrator, in making or specifying these adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines or light-duty trucks. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine or vehicle performance characteristics and surveillance information from similar in-use engines or vehicles.

(c) Prior to performing exhaust emission testing on an SEA test engine, the manufacturer may accumulate on each engine a number of hours of service equal to the greater of 125 hours or the number of hours the manufacturer accumulated during certification on the emission-data engine corresponding to the configuration specified in the test order. Prior to performing exhaust emission testing on an SEA test vehicle, the manufacturer may accumulate a number of miles equal to the greater of 4,000 miles or the number of miles the manufacturer accumulated during certification on the emission data vehicle corresponding to the configuration specified in the test order.

(1) Service or mileage accumulation must be performed in a manner using good engineering judgment to obtain emission results representative of normal production vehicles. This service or mileage accumulation must be consistent with the new vehicle break-in instructions contained in the applicable vehicle owner's manual, if any.

(2) The manufacturer shall accumulate service at a minimum rate of 16 hours per engine or mileage at a minimum rate of 300 miles per vehicle during each 24-hour period, unless otherwise provided by the Administrator.

(i) The first 24 hour period for service or mileage accumulation shall begin as soon as authorization checks, inspections and preparations are completed on each engine or vehicle.

(ii) The minimum service or mileage accumulation rate does not apply on weekends or holidays.

(iii) If the manufacturer's service or mileage accumulation target is less than the minimum rate specified (16 hours or 300 miles per day), then the minimum daily accumulation rate shall be equal to the manufacturer's

service or mileage accumulation target.

(3) Service or mileage accumulation shall be completed on a sufficient number of test engines or vehicles during consecutive 24-hour periods to assure that the number of engines or vehicles tested per day fulfills the requirements of paragraph (g) of this section.

(d) The manufacturer shall not perform any maintenance on test vehicles or engines after selection for testing, nor shall the Administrator allow deletion of any test vehicle or engine from the test sequence, unless requested by the manufacturer, and approved by the Administrator before any test vehicle or engine maintenance or deletion.

(e) The manufacturer shall expeditiously ship test engines or vehicles from the point of selection to the test facility. If the test facility is not located at or in close proximity to the point of selection, the manufacturer shall assure that test engines or vehicles arrive at the test facility within 24 hours of selection: *Except,* that the Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) If an engine or vehicle cannot complete the service or mileage accumulation or emission test because of a malfunction, the manufacturer may request that the Administrator authorize the repair of that engine or vehicle or its deletion from the test sequence.

(g) Whenever a manufacturer conducts testing pursuant to a test order issued under this subpart, the manufacturer shall notify the Administrator within one working day of receipt of the test order which test facility will be used to comply with the test order. If no test cells are available at a desired facility, the manufacturer must provide alternate testing capability satisfactory to the Administrator.

(1) Heavy-duty engine manufacturers with projected sales for the United States market for that year of 30,000 or greater shall complete emission testing at their facility on a minimum of two engines per 24-hour period, including each voided test and each diesel engine smoke test.

(2) Heavy-duty engine manufacturers with projected sales for the United States market for that year of less than 30,000 shall complete emission testing at their facility on a minimum of one engine per 24-hour period, including each voided test and each diesel engine smoke test.

(3) Light-duty truck manufacturers shall complete emission testing at their facility on a minimum of four engines per 24-hour period, including each voided test.

(4) The Administrator may approve a lower daily rate of conducting emission tests based upon a request by a satisfactory justification.

(h) The manufacturer shall perform test engine or vehicle selection, shipping, preparation, service or mileage accumulation, and testing in such a manner as to assure that the audit is performed in an expeditious manner.

(i) The manufacturer may retest any engines or vehicles tested during a Selective Enforcement Audit once a fail decision for the audit has been reached in accordance with § 86.1010–84(d) based on the first test on each engine or vehicle: *Except,* that the Administrator may approve retesting at other times based upon a request by the manufacturer accompanied by a satisfactory justification. The manufacturer may test each engine or vehicle a total of three times. The manufacturer shall test each engine or vehicle the same number of times. The manufacturer may accumulate additional service or mileage before conducting a retest, subject to the provisions of paragraph (c) of this section.

[54 FR 14560, Apr. 11, 1989, as amended at 57 FR 31922, July 17, 1992; 58 FR 16046, Mar. 24, 1993; 62 FR 47123, Sept. 5, 1997]

§ 86.1008–96 Test procedures.

Section 86.1008–96 includes text that specifies requirements that differ from § 86.1008–90. Where a paragraph in § 86.1008–90 is identical and applicable to § 86.1008–96, this is indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1008–90.'' Where a corresponding paragraph of § 86.1008–90 is not applicable, this is indicated by the statement ''[Reserved].''

(a)(1)(i) For heavy-duty engines, the prescribed test procedure is the Federal

Test Procedure, as described in subparts N, I, and P of this part.

(ii) During the testing of heavy-duty diesel engines, the manufacturer shall decide for each engine, prior to the start of the initial cold cycle, whether the measurement of background particulate is required for the cold and hot cycles to be valid. The manufacturer may choose to have different requirements for the cold and hot cycles. If a manufacturer chooses to require the measurement of background particulate, failure to measure background particulate shall void the test cycle regardless of the test results. If a test cycle is void, the manufacturer shall retest using the same validity requirements of the initial test.

(2) For light-duty trucks, the prescribed test procedures are the FTP as described in subparts B, C, and P of this part and the CST as described in subpart O of this part. The manufacturer may not perform the evaporative emission test procedure contained in subpart B. The Administrator may, based on advance application by a manufacturer, approve optional test procedures for use in Selective Enforcement Audit Testing.

(3) [Reserved]. For guidance see § 86.1008–90.

(4) When testing light-duty trucks the following exception to the test procedures in subpart O of this part is applicable: manufacturer need not comply with § 86.1442, since the records required therein are provided under other provisions of subpart K of this part.

(ii) In addition to the requirements of subpart O of this part the manufacturer must prepare vehicles as described in paragraphs (a)(4)(ii) (A) through (C) of this section prior to exhaust emission testing.

(A) The manufacturer must inspect the fuel system to insure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5 ± 0.5 inches of water to the fuel system, allowing the pressure to stabilize, and isolating the fuel system from the pressure source. Pressure must not drop more than 2.0 inches of water in five minutes. If required, the manufacturer performs corrective action in accordance with this section and must report this action in accordance with § 86.1009.

(B) When performing this pressure check, the manufacturer must exercise care to neither purge nor load the evaporative system.

(C) The manufacturer may not modify the test vehicle's evaporative emission control system by component addition, deletion, or substitution.

(5) [Reserved]. For guidance see § 86.1008–90.

(6) The Administrator may select and prescribe the sequence of any CSTs. Further, the Administrator may, on the basis of a written application by a manufacturer, prescribe minor test procedure variations from those set forth in paragraphs (a) (1) and (2) of this section for any heavy-duty engine or light-duty truck.

(b) through (i) [Reserved]. For guidance see § 86.1008–90.

[58 FR 58425, Nov. 1, 1993, as amended at 62 FR 47123, Sept. 5, 1997]

§ 86.1008–97 Test procedures.

Section 86.1008–97 includes text that specifies requirements that differ from those specified in §§ 86.1008–90 and 86.1008–96. Where a paragraph in § 86.1008–90 or § 86.1008–96 is identical and applicable to § 86.1008–97, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1008–90.'' or ''[Reserved]. For guidance see § 86.1008–96.''

(a)(1) [Reserved]. For guidance see § 86.1008–96.

(2) For light-duty trucks, the prescribed test procedures are the Federal Test Procedure, as described in subpart B and/or subpart R of this part, whichever is applicable, the idle CO test procedure as described in subpart P of this part, the cold temperature CO test procedure as described in subpart C of this part, and the Certification Short Test procedure as described in subpart O of this part. Where the manufacturer conducts testing based on the requirements specified in Chapter 1 or Chapter 2 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996), the prescribed test procedures are the procedures cited in the previous

sentence, or substantially similar procedures, as determined by the Administrator. The California Regulatory Requirements Applicable to the National Low Emission Vehicle Program are incorporated by reference (see § 86.1). For purposes of Selective Enforcement Audit testing, the manufacturer shall not be required to perform any of the test procedures in subpart B of this part relating to evaporative emission testing, except as specified in paragraph (a)(3) of this section. The Administrator may select and prescribe the sequence of any Certification Short Tests. Further, the Administrator may, on the basis of a written application by a manufacturer, approve optional test procedures other than those in subparts B, C, P, and O of this part for any motor vehicle which is not susceptible to satisfactory testing using the procedures in subparts B, C, P, and O of this part.

(3) When testing light-duty trucks the following exceptions to the test procedures in subpart B and/or subpart R of this part are applicable:

(i) For mileage accumulation, the manufacturer may use test fuel meeting the specifications for mileage and service accumulation fuels of § 86.113–94, or, for vehicles certified to the National LEV standards, the specifications of § 86.1771. Otherwise, the manufacturer may use fuels other than those specified in this section only with the advance approval of the Administrator.

(ii) [Reserved]. For guidance see § 86.1008–90.

(iii) The manufacturer may perform additional preconditioning on Selective Enforcement Audit test vehicles other than the preconditioning specified in § 86.132, or § 86.1773 for vehicles certified to the National LEV standards, only if the additional preconditioning had been performed on certification test vehicles of the same configuration.

(a)(3)(iv) through (a)(3)(vii) [Reserved]. For guidance see § 86.1008–90.

(a)(3)(viii) The manufacturer need not comply with § 86.142 or § 86.1775, since the records required therein are provided under other provisions of this subpart.

(a)(3)(ix) [Reserved]. For guidance see § 86.1008–90.

(a)(4) [Reserved]. For guidance see § 86.1008–96.

(5) [Reserved]. For guidance see § 86.1008–90.

(6) [Reserved]. For guidance see § 86.1008–96.

(b) through (i) [Reserved]. For guidance see § 86.1008–90.

[62 FR 31238, June 6, 1997]

§ 86.1008–2001 Test procedures.

(a)(1)(i) For heavy-duty engines, the prescribed test procedure is the Federal Test Procedure as described in subparts N, I, and P of this part. The Administrator, may on the basis of a written application by a manufacturer, approve optional test procedures other than those in subparts N, I, and P of this part for any heavy-duty vehicle which is not susceptible to satisfactory testing using the procedures in subparts N, I, and P of this part.

(ii) For heavy-duty vehicles the prescribed test procedures are the Fuel Dispensing Spitback Test as described in § 86.1246–96 (for HDVs with a GVW of less than 14,000 pounds (6,400 kilograms)); this test for fuel spitback is conducted as a stand alone test, thus all references to the test sequence described in figure M96–1 of subpart M of this part can be ignored. Further, the Administrator may, on the basis of a written application by a manufacturer, approve optional test procedures other than those in subpart M of this part for any heavy-duty vehicle which is not susceptible to satisfactory testing using the procedures in subpart M of this part.

(iii) During the testing of heavy-duty diesel engines, the manufacturer shall decide for each engine, prior to the start of the initial cold cycle, whether the measurement of background particulate is required for the cold and hot cycles to be valid. The manufacturer may choose to have different requirements for the cold and hot cycles. If a manufacturer chooses to require the measurement of background particulate, failure to measure background particulate shall void the test cycle regardless of the test results. If a test cycle is void, the manufacturer shall retest using the same validity requirements of the initial test.

(2) For light-duty trucks, the prescribed test procedures are the Federal Test Procedure as described in subpart B and/or subpart R of this part, whichever is applicable, the idle CO test procedure as described in subpart P of this part, the cold temperature CO test procedure as described in subpart C of this part, and the Certification Short Test procedure as described in subpart O of this part. For purposes of Selective Enforcement Audit Testing, the manufacturer shall not be required to perform any of the test procedures in subpart B of this part relating to evaporative emission testing, other than refueling emissions testing, except as specified in paragraph (a)(3) of this section. The Administrator may select and prescribe the sequence of any CSTs. Further, the Administrator may, on the basis of a written application by a manufacturer, approve optional test procedures other than those in subparts B, C, P, O, and R of this part for any motor vehicle which is not susceptible to satisfactory testing using the procedures in subparts B, C, P, O, and R of this part.

(3) When testing light-duty trucks, the following exceptions to the test procedures in subpart B and/or subpart R of this part are applicable to Selective Enforcement Audit testing:

(i) For mileage accumulation, the manufacturer may use test fuel meeting the specifications for mileage and service accumulation fuels of §86.113, or, for vehicles certified to the National LEV standards, the specifications of §86.1771. Otherwise, the manufacturer may use fuels other than those specified in this section only with the advance approval of the Administrator.

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in §86.131–96(a) with only a single temperature sensor, and may drain the test fuel from other than the lowest point of the tank, as specified in §86.131–96(b) and §86.152–98(a), provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturer and shall be made available upon request.

(iii) The manufacturer may perform additional preconditioning on SEA test vehicles other than the preconditioning specified in §86.132, or §86.1773 for vehicles certified to the National LEV standards, only if the additional preconditioning was performed on certification test vehicles of the same configuration.

(iv) If the Administrator elects to use the evaporative/refueling canister preconditioning procedure described in §86.132–96(k), the manufacturer shall perform the heat build procedure 11 to 34 hours following vehicle preconditioning rather than according to the time period specified in §86.133–90(a). All references to an evaporative emission enclosure and analyzing for HC during the heat build can be ignored.

(v) The manufacturer may substitute slave tires for the drive wheel tires on the vehicle as specified in paragraph §86.135–90(e): *Provided*, that the slave tires are the same size.

(vi) If the Administrator elects to use the evaporative/refueling canister preconditioning procedure described in §86.132–96(k), the cold start exhaust emission test described in §86.137–96 shall follow the heat build procedure described in §86.133–90 by not more than one hour.

(vii) In performing exhaust sample analysis under §86.140–94.

(A) When testing diesel vehicles, or methanol-fueled Otto-cycle vehicles, the manufacturer shall allow a minimum of 20 minutes warm-up for the HC analyzer, and for diesel vehicles, a minimum of two hours warm-up for the CO, CO_2, and NO_X analyzers. (Power is normally left on infrared and chemiluminescent analyzers. When not in use, the chopper motors of the infrared analyzers are turned off and the phototube high voltage supply to the chemiluminescent analyzers is placed in the standby position.)

(B) The manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(viii) The manufacturer need not comply with §86.142, §86.155, or §86.1775 since the records required therein are provided under other provisions of this subpart K.

(ix) If a manufacturer elects to perform the background determination procedure described in paragraph (a)(3)(xi) of this section in addition to

performing the refueling emissions test procedure, the elapsed time between the initial and final FID readings shall be recorded, rounded to the nearest second rather than minute as described in § 86.154–98(e)(8). In addition, the vehicle soak described in § 86.153–98(e) shall be conducted with the windows and luggage compartment of the vehicle open.

(x) The Administrator may elect to perform a seal test, described in § 86.153–98(b), of both integrated and non-integrated systems instead of the full refueling test. When testing non-integrated systems, a manufacturer may conduct the canister purge described in § 86.153–98(b)(1) directly following the preconditioning drive described in § 86.132–96(e) or directly following the exhaust emissions test described in § 86.137–96.

(xi) In addition to the refueling test, a manufacturer may elect to perform the following background emissions determination immediately prior to the refueling measurement procedure described in § 86.154–98, provided EPA is notified of this decision prior to the start of testing in an SEA.

(A) The SHED shall be purged for several minutes immediately prior to the background determination. Warning: If at any time the concentration of hydrocarbons, of methanol, or of methanol and hydrocarbons exceeds 15,000 ppm C, the enclosure should be immediately purged. This concentration provides a 4:1 safety factor against the lean flammability limit.

(B) The FID (or HFID) hydrocarbon analyzer shall be zeroed and spanned immediately prior to the background determination. If not already on, the enclosure mixing fan and the spilled fuel mixing blower shall be turned on at this time.

(C) Place the vehicle in the SHED. The ambient temperature level encountered by the test vehicle during the entire background emissions determination shall be 80 °F ±3 °F. The windows and luggage compartment of the vehicle must be open and the gas cap must be secured.

(D) Seal the SHED. Immediately analyze the ambient concentration of hydrocarbons in the SHED and record. This is the initial background hydrocarbon concentration.

(E) Soak the vehicle for ten minutes ±1 minute.

(F) The FID (or HFID) hydrocarbon analyzer shall be zeroed and spanned immediately prior to the end of the background determination.

(G) Analyze the ambient concentration of hydrocarbons in the SHED and record. This is the final background hydrocarbon concentration.

(H) The total hydrocarbon mass emitted during the background determination is calculated according to § 86.156–98. To obtain a per-minute background emission rate, divide the total hydrocarbon mass calculated in this paragraph by the duration of the soak, rounded to the nearest second, described in paragraph (a)(3)(xi)(G) of this section.

(I) The background emission rate is multiplied by the duration of the refueling measurement obtained in paragraph (a)(3)(ix) of this section. This number is then subtracted from the total grams of emissions calculated for the refueling test according to § 86.156–98(a) to obtain the adjusted value for total refueling emissions. The final results for comparison with the refueling emission standard shall be computed by dividing the adjusted value for total refueling mass emissions by the total gallons of fuel dispensed in the refueling test as described in § 86.156–98(b).

(xii) In addition to the requirements of subpart B of this part, the manufacturer shall prepare gasoline-fueled and methanol-fueled vehicles as follows prior to emission testing:

(A) The manufacturer shall inspect the fuel system to ensure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5±0.5 inches of water (3.6±0.1 Kpa) to the fuel system allowing the pressure to stabilize and isolating the fuel system from the pressure source. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water (0.5 Kpa) in five minutes. If required, the manufacturer shall perform corrective action in accordance with paragraph (d) of this section and report this action in accordance with § 86.1009–2001(d).

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative or refueling emission control systems.

(C) The manufacturer may not modify the test vehicle's evaporative or refueling emission control systems by component addition, deletion, or substitution, except to comply with paragraph (a)(3)(ii) of this section if approved in advance by the Administrator.

(4) When testing light-duty trucks, the following exceptions to the test procedures in subpart C of this part are applicable to Selective Enforcement Audit testing:

(i) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in §86.131–90(a), and may drain the test fuel from other than the lowest point of the fuel tank as specified in §86.131–90(b), provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(ii) In performing exhaust sample analysis under §86.140–94, the manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(iii) The manufacturer need not comply with §86.142–90 since the records required therein are provided under other provisions of this subpart K.

(iv) In addition to the requirements of subpart C of this part, the manufacturer shall prepare gasoline-fueled vehicles as follows prior to exhaust emission testing:

(A) The manufacturer shall inspect the fuel system to ensure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5±0.5 inches of water (3.6±0.1 Kpa) to the fuel system allowing the pressure to stabilize and isolating the fuel system from the pressure source. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water (0.5 Kpa) in five minutes. If required, the manufacturer shall perform corrective action in accordance with paragraph (d) of this section and report this action in accordance with §86.1009–2001(d).

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative or refueling emission control system.

(C) The manufacturer shall not modify the test vehicle's evaporative or refueling emission control system by component addition, deletion, or substitution, except if approved in advance by the Administrator, to comply with paragraph (a)(4)(ii) of this section.

(5) When testing light-duty trucks, the exceptions to the test procedures in subpart O of this part applicable to Selective Enforcement Audit testing are listed in paragraphs (a)(5) (i) and (ii) of this section.

(i) The manufacturer need not comply with §86.1442, since the records required therein are provided under provisions of this subpart K.

(ii) In addition to the requirements of subpart O of this part, the manufacturer must prepare vehicles as in paragraphs (a)(5)(ii) (A) through (C) of this section prior to exhaust emission testing.

(A) The manufacturer must inspect the fuel system to insure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5±0.5 inches of water (3.6±0.1 Kpa) to the fuel system, allowing the pressure to stabilize, and isolating the fuel system from the pressure source. Pressure must not drop more than 2.0 inches of water (0.5 Kpa) in five minutes. If required, the manufacturer performs corrective action in accordance with this section and must report this action in accordance with §86.1009–2001.

(B) When performing this pressure check, the manufacturer must exercise care to neither purge nor load the evaporative or refueling emission control system.

(C) The manufacturer may not modify the test vehicle's evaporative or refueling emission control system by component addition, deletion, or substitution.

(b)(1) The manufacturer shall not adjust, repair, prepare, or modify the vehicles selected for testing and shall not perform any emission tests on vehicles selected for testing pursuant to the

test order unless this adjustment repair, preparation, modification, and/or tests are documented in the manufacturer's vehicle assembly and inspection procedures and are actually performed or unless these adjustments and/or tests are required or permitted under this subpart or are approved in advance by the Administrator.

(2) For 1984 and later model years the Administrator may adjust or cause to be adjusted any engine or vehicle parameter which the Administrator has determined to be subject to adjustment for certification, Selective Enforcement Audit testing, and Production Compliance Audit testing in accordance with §86.090–22(c)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with §86.090–22(e)(3)(ii), prior to the performance of any tests. However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a lower engine idle speed than will be possible within the physically adjustable range of the idle speed parameter if the manufacturer had accumulated 125 hours of service on the engine or 4,000 miles on the vehicle under paragraph (c) of this section, all other parameters being identically adjusted for the purpose of comparison. The manufacturer may be requested to supply information to establish such an alternative minimum idle speed. The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines or light-duty trucks. In determining likelihood, the Administrator will consider factors such as, but not limited to, the effect of the adjustment on engine or vehicle performance characteristics and surveillance information from similar in-use vehicles.

(c) Prior to performing emission testing on an SEA test engine, the manufacturer may accumulate on each engine a number of hours of service equal to the greater of 125 hours or the number of hours the manufacturer accumulated during certification on the emission-data engine corresponding to the configuration specified in the test order. Prior to performing emission testing on an SEA test vehicle, the manufacturer may accumulate on each vehicle a number of miles equal to the greater of 4,000 miles, or the number of miles the manufacturer accumulated during certification on the emission-data vehicle corresponding to the configuration specified in the test order.

(1) Service or mileage accumulation must be performed in a manner using good engineering judgment to obtain emission results representative of normal production vehicles. This service or mileage accumulation must be consistent with the new vehicle break-in instructions contained in the applicable vehicle owner's manual, if any.

(2) The manufacturer shall accumulate service at a minimum rate of 16 hours per engine or mileage at a minimum rate of 300 miles per vehicle during each 24-hour period, unless otherwise provided by the Administrator.

(i) The first 24-hour period for service or mileage accumulation shall begin as soon as authorization checks, inspections and preparations are completed on each engine or vehicle.

(ii) The minimum service or mileage accumulation rate does not apply on weekends or holidays.

(iii) If the manufacturer's service or mileage accumulation target is less than the minimum rate specified (16 hours or 300 miles per day), then the minimum daily accumulation rate shall be equal to the manufacturer's service or mileage accumulation target.

(3) Service or mileage accumulation shall be completed on a sufficient number of test engines or vehicles during consecutive 24-hour periods to assure that the number of engines or vehicles tested per day fulfills the requirements of paragraph (g) of this section.

(d) The manufacturer shall not perform any maintenance on test vehicles or engines after selection for testing, nor shall the Administrator allow deletion of any test vehicle or engine from the test sequence, unless requested by the manufacturer, and approved by the

Administrator before any test vehicle or engine maintenance or deletion.

(e) The manufacturer shall expeditiously ship test engines or vehicles from the point of selection to the test facility. If the test facility is not located at or in close proximity to the point of selection, the manufacturer shall assure that the test engines or vehicles arrive at the test facility within 24 hours of selection: *Except,* that the Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) If an engine or vehicle cannot complete the service or mileage accumulation or emission test because of a malfunction, the manufacturer may request that the Administrator authorize the repair of that engine or vehicle or its deletion from the test sequence.

(g) Whenever the manufacturer conducts testing pursuant to a test order issued under this subpart, the manufacturer shall notify the Administrator within one working day of receipt of the test order, which test facility will be used to comply with the test order and the number of available test cells at that facility. If no test cells are available at the desired facility, the manufacturer must provide alternate testing capability satisfactory to the Administrator.

(1) Heavy-duty engine manufacturers with projected sales for the United States market for that year of 30,000 or greater shall complete emission testing at their facility on a minimum of two engines per 24-hour period, including each voided test and each diesel engine smoke test.

(2) Heavy-duty engine manufacturers with projected sales for the United States market for that year of less than 30,000 shall complete emission testing at their facility on a minimum of one engine per 24-hour period, including each voided test and each diesel engine smoke test.

(3) Light-duty truck and heavy-duty vehicle manufacturers shall perform a combination of tests pursuant to paragraph (a) of this section so that a minimum of four tests are performed per 24 hour period, including voided tests, for each available test cell.

(4) The Administrator may approve a longer period based upon a request by a manufacturer accompanied by satisfactory justification.

(h) The manufacturer shall perform test engine or vehicle selection, shipping, preparation, service or mileage accumulation, and testing in such a manner as to assure that the audit is performed in an expeditious manner.

(i) The manufacturer may retest any test vehicle or engine after a fail decision has been reached in accordance with §86.1010–2001(d) based on the first test on each vehicle or engine; except that the Administrator may approve retests at other times during the audit based upon a request by the manufacturer accompanied by a satisfactory justification. The manufacturer may test each vehicle or engine a total of three times. The manufacturer shall test each vehicle or engine the same number of times. The manufacturer may accumulate additional service or mileage before conducting retests, subject to the provisions of paragraph (c) of this section.

[59 FR 16305, Apr. 6, 1994, as amended at 62 FR 31239, June 6, 1997; 62 FR 47123, Sept. 5, 1997]

§86.1009–84 Calculation and reporting of test results.

(a) Initial test results are calculated following the Federal Test Procedure specified in §86.1008–94(a). Round the initial test results to the number of decimal places contained in the applicable emission standard, expressed to one additional significant figure. Rounding shall be done in accordance with ASTM E 29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications. This procedure has been incorporated by reference (see §86.1).

(b) Final test results for each test vehicle shall be calculated by summing the initial test results derived in paragraph (a) of this section for each test engine or vehicle, dividing by the number of tests conducted on the engine or vehicle, and rounding to the same number of decimal places contained in the applicable emission standard, expressed to one additional significant figure. Rounding shall be done in accordance with ASTM E 29–90, Standard

Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications. This procedure has been incorporated by reference (see § 86.1).

(c) *Final deteriorated test results.* (1) The final deteriorated test results for each heavy-duty engine or light-duty truck tested according to subpart B, C, D, N, or P of this part are calculated by either adding or multiplying, as specified in subpart A of this part for the applicable engine family control system combination, the appropriate deterioration factor to the final test results for each vehicle or engine.

(2) The final deteriorated test results for each heavy-duty engine tested according to subpart I of this part are calculated by adding the appropriate deterioration factor, derived from the certification process for the engine family-control system combination and model year for the selected configuration to which the test engine belongs, to the final test results. If the deterioration factor computed during the certification process is less than zero, that deterioration factor will be zero.

(3) There are no deterioration factors for light-duty trucks tested in accordance with § 86.146–96 of subpart B of this part or for heavy-duty vehicles tested in accordance with § 86.1246–96 of subpart M of this part. Accordingly, for the Fuel Dispensing Spitback Test the term ''final deteriorated test results'' shall mean the final test results derived in paragraph (b) of this section for each test vehicle, rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E 29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications. This procedure has been incorporated by reference (see § 86.1).

(4) The final deteriorated test results are rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E 29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications. This procedure has been incorporated by reference (see § 86.1).

(d) Within five working days after completion of testing of all engines or vehicles pursuant to a test order, the manufacturer shall submit to the Administrator a report which includes the following information:

(1) The location and description of the manufacturer's exhaust emission test facilities which were utilized to conduct testing reported pursuant to this section;

(2) The applicable standards or compliance levels against which the engines or vehicles were tested;

(3) Deterioration factors for the engine family to which the selected configuration belongs;

(4) A description of the engine or vehicle and any emission-related component selection method used;

(5) For each test conducted,

(i) Test engine or vehicle description, including:

(A) Configuration and engine family identification,

(B) Year, make and build date,

(C) Engine or vehicle identification number, and

(D) Number of hours of service accumulated on engine or number of miles on vehicle prior to testing;

(ii) Location where service or mileage accumulation was conducted and description of accumulation procedure and schedule;

(iii) Test number, date, initial test results before and after rounding, final test results and final deteriorated test results for all exhaust emission tests, whether valid or invalid, and the reason for invalidation, if applicable;

(iv) A complete description of any modification, repair, preparation, maintenance, and/or testing which was performed on the test engine or vehicle and has not been reported pursuant to any other paragraph of this subpart and will not be performed on all other production engines or vehicles;

(v) Where an engine or vehicle was deleted from the test sequence by authorization of the Administrator, the reason for the deletion;

(vi) For all valid and invalid exhaust emission tests, carbon dioxide emission values for LDTs and brake-specific fuel consumption values for HDEs; and

(vii) Any other information the Administrator may request relevant to

the determination as to whether the new heavy-duty engines or light-duty trucks being manufactured by the manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued; and

(6) The following statement and endorsement:

This report is submitted pursuant to Sections 206 and 208 of the Clean Air Act. This Selective Enforcement Audit was conducted in complete conformance with all applicable regulations under 40 CFR part 86 *et seq.*, and the conditions of the test order. No emission-related changes to production processes or quality control procedures for the vehicle or engine configuration tested have been made between receipt of the test order and conclusion of the audit. All data and information reported herein is, to the best of

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(Company Name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

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(Authorized Company Representative)

[45 FR 63772, Sept. 25, 1980, as amended at 48 FR 52209, Nov. 16, 1983; 50 FR 35387, Aug. 30, 1985; 57 FR 31923, July 17, 1992; 58 FR 16046, Mar. 24, 1993]

§86.1009–96 Calculation and reporting of test results.

Section 86.1009–96 includes text that specifies requirements that differ from §86.1009–84. Where a paragraph in §86.1009–84 is identical and applicable to §86.1009–96, this is indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see §86.1009–84.'' Where a corresponding paragraph of §86.1009–84 is not applicable, this is indicated by the statement ''[Reserved].''

(a) Initial test results are calculated following the test procedures specified in §86.1008(a). Round these results to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure. Rounding is done in accordance with ASTM E 29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications. This procedure has been incorporated by reference (see §86.1).

(b) Final test results are calculated by summing the initial test results within a specific FTP, CST, or Cold Temperature CO Test Procedure derived in paragraph (a) of this section for each test engine or vehicle, dividing by the number of times that specific FTP, CST, or Cold Temperature CO Test Procedure has been conducted on the engine or vehicle, and rounding in accordance with ASTM E29–90 to the same number of decimal places contained in the applicable standard expressed to one additional significant figure. Rounding is done in accordance with ASTM E 29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications. This procedure has been incorporated by reference (see §86.1).

(c) *Final deteriorated test results.* (1) The final deteriorated test results for each heavy-duty engine or light-duty truck tested according to subpart B, C, D, I, N, or P of this part are calculated by multiplying or adding the final test results by the appropriate deterioration factor, derived from the certification process for the engine family-control system combination and model year for the selected configuration to which the test engine or vehicle belongs. If the multiplicative deterioration factor as computed during the certification process is less than one, that deterioration factor is one. If the additive deterioration factor as computed during the certification process is less than zero, that deterioration factor will be zero.

(2) [Reserved]

(3)(i) There are no deterioration factors for light-duty vehicles tested in accordance with subpart O of this part. Accordingly, for the CST the term ''final deteriorated test results'' means the final test results derived in paragraph (b) of this section for each test vehicle.

(ii) There are no deterioration factors for light-duty trucks tested in accordance with §86.146–96 or for heavy-duty vehicles tested in accordance with §86.1246–96. Accordingly, for the Fuel Dispensing Spitback Test the term ''final deteriorated test results'' means the final test results derived in paragraph (b) of this section for each test vehicle.

(4) The final deteriorated test results are rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E 29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications. This procedure has been incorporated by reference (see § 86.1).

(d) [Reserved]. For guidance see § 86.1009–84.

[58 FR 58425, Nov. 1, 1993]

§ 86.1009–97 Calculation and reporting of test results.

Section 86.1009–97 includes text that specifies requirements that differ from those specified in §§ 86.1009–84 and 86.1009–96. Where a paragraph in § 86.1009–84 or § 86.1009–96 is identical and applicable to § 86.1009–97, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1009–84.'' or ''[Reserved]. For guidance see § 86.1009–96.''.

(a) and (b) [Reserved]. For guidance see § 86.1009–96.

(c) *Final deteriorated test results.* (1) The final deteriorated test results for each heavy-duty engine or light-duty truck tested according to subpart B, C, D, I, N, P, or R of this part are calculated by first multiplying or adding, as appropriate, the final test results by or to the appropriate deterioration factor derived from the certification process for the engine family control system combination and model year to which the selected configuration belongs, and then by multiplying by the appropriate reactivity adjustment factor, if applicable. If the multiplicative deterioration factor as computed during the certification process is less than one, that deterioration factor will be one. If the additive deterioration factor as computed during the certification process is less than zero, that deterioration factor will be zero.

(c)(2) [Reserved]

(c)(3) through (c)(4) [Reserved]. For guidance see § 86.1009–96.

(d) [Reserved]. For guidance see § 86.1009–84.

[62 FR 31239, June 6, 1997]

§ 86.1009–2001 Calculation and reporting of test results.

(a) Initial test results are calculated following the Federal Test Procedure specified in § 86.1008–2001(a). Rounding is done in accordance with ASTM E 29–67 (reapproved 1980) (as referenced in § 86.094–28 (a)(4)(i)(B)(*2*)(*ii*) to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(b) Final test results are calculated by summing the initial test results derived in paragraph (a) of this section for each test vehicle or engine, dividing by the number of times that specific test has been conducted on the vehicle or engine, and rounding to the same number of decimal places contained in the applicable standard expressed to one additional significant figure. Rounding is done in accordance with ASTM E 29–67 (reapproved 1980) (as referenced in § 86.094–28(a)(4)(i)(B)(*2*)(*ii*)).

(c) *Final deteriorated test results.* (1) The final deteriorated test results for each light-duty truck, heavy-duty engine, or heavy-duty vehicle tested according to subpart B, C, D, I, M, N, P, or R of this part are calculated by first multiplying or adding, as appropriate, the final test results by or to the appropriate deterioration factor derived from the certification process for the engine or evaporative/refueling family and model year to which the selected configuration belongs, and then by multiplying by the appropriate reactivity adjustment factor, if applicable. For the purpose of this paragraph (c), if a multiplicative deterioration factor as computed during the certification process is less than one, that deterioration factor will be one. If an additive deterioration factor as computed during the certification process is less than zero, that deterioration factor will be zero.

(2) *Exceptions.* There are no deterioration factors for light-duty truck emissions obtained during testing in accordance with subpart O of this part or with § 86.146–96. Accordingly, for the CST and the fuel dispensing spitback test the term ''final deteriorated test results'' means the final test results derived in paragraph (b) of this section for each test vehicle.

(3) The final deteriorated test results obtained in paragraph (c) (1) and (2) of this section are rounded to the same number of decimal places contained in the applicable emission standard. Rounding is done in accordance with ASTM E 29–67 (reapproved 1980) (as referenced in § 86.094–28(a)(4)(i)(B)(*2*)(*ii*)).

(d) Within five working days after completion of testing of all engines or vehicles pursuant to a test order, the manufacturer shall submit to the Administrator a report which includes the following information:

(1) The location and description of the manufacturer's emission test facilities which were utilized to conduct testing reported pursuant to this section.

(2) The applicable standards or compliance levels against which the engines or vehicles were tested.

(3) Deterioration factors for the selected configuration.

(4) A description of the engine or vehicle and any emission-related component selection method used.

(5) For each test conducted.

(i) Test engine or vehicle description including:

(A) Configuration, engine family, and evaporative/refueling family identification.

(B) Year, make, build date, and model of vehicle.

(C) Vehicle Identification Number.

(D) Miles accumulated on vehicle.

(ii) Location where mileage accumulation was conducted and description of accumulation schedule.

(iii) Test number, date initial test results, final results and final deteriorated test results for all valid and invalid exhaust emission tests, and the reason for invalidation, if applicable.

(iv) A complete description of any modification, repair, preparation, maintenance and/or testing which was performed on the test engine or vehicle and has not been reported pursuant to any other paragraph of this subpart and will not be performed on all other production engines or vehicles.

(v) Where an engine or vehicle was deleted from the test sequence by authorization of the Administrator, the reason for the deletion.

(vi) For all valid and invalid exhaust emission tests, carbon dioxide emission values for LDTs and brake-specific fuel consumption values for HDEs.

(vii) Any other information the Administrator may request relevant to the determination as to whether the new motor vehicles being manufactured by the manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued.

(6) The following statement and endorsement:

This report is submitted pursuant to sections 206 and 208 of the Clean Air Act. This Selective Enforcement Audit was conducted in complete conformance with all applicable regulations under 40 CFR part 86 and the conditions of the test order. No emission related change(s) to production processes or quality control procedures for the engine or vehicle configuration tested have been made between receipt of this test order and conclusion of the audit. All data and information reported herein is, to the best of

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(Company Name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

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(Authorized Company Representative)

[59 FR 16308, Apr. 6, 1994, as amended at 62 FR 31239, June 6, 1997]

§ 86.1010–96 Compliance with acceptable quality level and passing and failing criteria for Selective Enforcement Audits.

(a) The prescribed acceptable quality level is 40 percent.

(b) A failed engine or vehicle is one whose final deteriorated test results pursuant to § 86.1009(c), for one or more of the applicable pollutants, including fuel spitback, exceed the applicable emission standard or compliance level. For the CST as described in subpart O of this part, a vehicle fail determination is made if the final deteriorated test results for HC and/or CO emissions from any CST exceed the applicable emission standard.

(c) *Pass/fail criteria.* (1) The manufacturer must test heavy-duty engines, heavy duty vehicles, or light-duty trucks comprising the test sample until a pass decision is reached for all pollutants, or a fail decision is reached for one pollutant. A pass decision is

reached when the cumulative number of failed engines or vehicles, as defined in paragraph (b) of this section, for each pollutant is less than or equal to the pass decision number appropriate to the cumulative number of engines or vehicles tested. A fail decision is reached when the cumulative number of failed engines or vehicles for one or more pollutants is greater than or equal to the fail decision number appropriate to the cumulative number of engines or vehicles tested. The pass and fail decision numbers associated with the cumulative number of engines or vehicles tested are determined by use of the tables in appendix X to this part appropriate to the projected sales as made by the heavy-duty engine or heavy-duty vehicle manufacturer in its Application for Certification, or as made by the light-duty truck manufacturer as made in its report submitted under §600.207–80(a)(2) of this chapter (Automobile Fuel Economy Regulations). In the tables in appendix X to this part, sampling plan ''stage'' refers to the cumulative number of engines or vehicles tested. Once a pass or fail decision has been made for a particular pollutant, the number of engines or vehicles whose final deteriorated test results exceed the emission standard or compliance level, if applicable, for that pollutant may not be considered any further for purposes of the audit.

(2) *CST criteria only*. A pass/fail decision is made based on the CST in its entirety rather than on a per pollutant basis. The manufacturer must test vehicles comprising the test sample until a pass or fail decision is reached for the CST. A pass decision is reached when the cumulative number of failed vehicles, as defined in paragraph (b) of this section, based on CST testing, is less than or equal to the pass decision number appropriate to the cumulative number of vehicles tested. A fail decision is reached when the cumulative number of failed vehicles based on CST testing is greater than or equal to the fail decision number appropriate to the cumulative number of vehicles tested. The pass and fail decision numbers associated with the cumulative number of vehicles tested are determined by use of the tables in appendix X to this part appropriate to the projected sales as made by the light-duty truck manufacturer as made in its report submitted under §600.207–80(a)(2) of this chapter (Automobile Fuel Economy Regulations). In the tables in appendix X to this part, sampling plan ''stage'' refers to the cumulative number of engines or vehicles tested. Once a pass or fail decision has been made based on CST testing, the number of vehicles whose final deteriorated test results exceed any of the emission standards for any CST may not be considered any further for purposes of the audit.

(d) Passing or failing of a SEA occurs when the decision is made on the last engine or vehicle required to make a decision under paragraph (c) of this section.

(e) The Administrator may terminate testing earlier than required in paragraph (c) of this section.

[58 FR 58426, Nov. 1, 1993]

§86.1010–2001 Compliance with acceptable quality level and passing and failing criteria for Selective Enforcement Audits.

(a) The prescribed acceptable quality level is 40 percent.

(b) A failed vehicle or engine is one whose final deteriorated test results pursuant to §86.1009–2001(c) exceed at least one of the applicable emission standards associated with the test procedures pursuant to §86.1008–2001(a).

(c)(1) *Pass/fail criteria*. The manufacturer shall test light-duty trucks, heavy-duty engines, or heavy-duty vehicles comprising the test sample until a pass decision is reached for all of the pollutants associated with all of the test procedures pursuant to §86.1008–2001(a) or a fail decision is reached for one of these pollutants. A pass decision is reached when the cumulative number of failed vehicles or engines, as defined in paragraph (b) of this section, for each pollutant is less than or equal to the fail decision number appropriate to the cumulative number of vehicles tested. A fail decision is reached when the cumulative number of failed vehicles or engines for one pollutant is greater than or equal to the fail decision number appropriate to the cumulative number of vehicles tested. The

pass and fail decision numbers associated with the cumulative number of vehicles tested are determined by use of the tables in appendix X of this part appropriate to the projected sales as made by the heavy-duty engine or heavy-duty vehicle manufacturer in its Application for Certification, or as made by the light-duty truck manufacturer in its report submitted under §600.207–80(a)(2) of this chapter (Automobile Fuel Economy Regulations). In the tables in appendix X of this part, sampling plan ''stage'' refers to the cumulative number of vehicles or engines tested. Once a pass decision has been made for a particular pollutant associated with a particular test procedure pursuant to §86.1008–2001(a), the number of vehicles or engines whose final deteriorated test results exceed the emission standard for that pollutant may not be considered any further for purposes of the audit.

(2) *CST criteria only.* For CST testing pursuant to subpart O, a pass or fail decision is determined according to the pass/fail criteria described in paragraph (c)(1) of this section, except that for each vehicle, the CST in its entirety is considered one pollutant.

(d) Passing or failing of an SEA audit occurs when the decision is made on the last vehicle or engine required to make a decision under paragraph (c) of this section.

(e) The Administrator may terminate testing earlier than required in paragraph (c) of this section.

[59 FR 16309, Apr. 6, 1994]

§86.1012–84 Suspension and revocation of certificates of conformity.

(a) The certificate of conformity is suspended with respect to any engine or vehicle failing pursuant to paragraph (b) of §86.1010–84 effective from the time that testing of that engine or vehicle is completed.

(b) The Administrator may suspend the certificate of conformity for a configuration which does not pass an SEA, pursuant to paragraph §86.1010–84(c), based on the first test or all tests conducted on each engine or vehicle. This suspension will not occur before ten days after failure to pass the audit.

(c)–(d) [Reserved]

(e) If the results of testing pursuant to these regulations indicate that engines or vehicles of a particular configuration produced at one plant of a manufacturer do not conform to the regulations with respect to which the certificate of conformity was issued, the Administrator may suspend the certificate of conformity with respect to that configuration for engines or vehicles manufactured by the manufacturer at all other plants.

(f) [Reserved]

(g) The Administrator shall notify the manufacturer in writing of any suspension or revocation of a certificate of conformity in whole or in part: *Except,* That the certificate is immediately suspended with respect to any failed engines or vehicles as provided for in paragraph (a) of this section.

(h) The Administrator may revoke a certificate of conformity for a configuration when the certificate has been suspended pursuant to paragraph (b), (c) or (e) of this section if the proposed remedy for the nonconformity, as reported by the manufacturer to the Administrator, is one requiring a design change or changes to the engine and/or emission control system as described in the Application for Certification of the affected configuration.

(i) Once a certificate has been suspended for a failed engine or vehicle as provided for in paragraph (a) of this section, the manufacturer shall take the following actions:

(1) Before the certificate is reinstated for that failed engine or vehicle,

(i) Remedy the nonconformity, and

(ii) Demonstrate that the engine or vehicle conforms to applicable standards or compliance levels by retesting the engine or vehicle in accordance with these regulations; and

(2) Submit a written report to the Administrator, after successful completion of testing on the failed engine or vehicle, which contains a description of the remedy and test results for each engine or vehicle in addition to other information that may be required by this regulation.

(j) Once a certificate for a failed configuration has been suspended pursuant to paragraph (b), (c) or (e) of this section, the manufacturer shall take the

following actions before the Administrator will consider reinstating the certificate:

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the engines or vehicles, describes the proposed remedy, including a description of any proposed quality control and/or quality assurance measures to be taken by the manufacturer to prevent future occurrences of the problem, and states the date on which the remedies will be implemented; and

(2) Demonstrate that the engine or vehicle configuration for which the certificate of conformity has been suspended does in fact comply with these regulations by testing engines or vehicles selected from normal production runs of that engine or vehicle configuration, at the plant(s) or associated storage facilities specified by the Administrator, in accordance with the conditions specified in the initial test order. If the manufacturer elects to continue testing individual engines or vehicles after suspension of a certificate, the certificate is reinstated for any engine or vehicle actually determined to be in conformance with the applicable standards or compliance levels through testing in accordance with the applicable test procedures, provided that the Administrator has not revoked the certificate pursuant to paragraph (h) of this section.

(k) Once the certificate has been revoked for a configuration and the manufacturer desires to continue introduction into commerce of a modified version of that configuration, the following actions shall be taken before the Administrator may consider issuing a certificate for that modified configuration:

(1) If the Administrator determines that the proposed change(s) in engine or vehicle design may have an effect on emission performance deterioration or, in the case of light-duty trucks, on fuel economy, the Administrator shall notify the manufacturer, within five (5) working days after receipt of the report in paragraph (h) of this section, whether subsequent testing under this subpart will be sufficient to evaluate the proposed change or changes or whether additional testing will be required; and

(2) After implementing the change or changes intended to remedy the nonconformity, the manufacturer shall demonstrate that the modified engine or vehicle configuration does in fact conform with these regulations by testing engines or vehicles selected from normal production runs of that modified engine or vehicle configuration in accordance with the conditions specified in the initial test order. This testing will be considered by the Administrator to satisfy the testing requirements of §86.078–32 or §86.079–33 if the Administrator has so notifed the manufacturer. If the subsequent audit results in passing of the audit at the level of the standards or compliance levels, if applicable, the Administrator shall reissue or amend the certificate, as the case may be, to include that configuration, provided that the manufacturer has satisfied the testing requirements of paragraph (k)(1) of this section. If the subsequent audit is failed, the revocation remains in effect. Any design change approvals under this subpart are limited to the configuration affected by the test order.

(l) At any time subsequent to an initial suspension of a certificate of conformity for a test engine or vehicle pursuant to paragraph (a) of this section, but not later than fifteen (15) days or such other period as may be allowed by the Administrator after notification of the Administrator's decision to suspend or revoke a certificate of conformity in whole or in part pursuant to paragraphs (b), (c), (d), (e), or (h) of this section, a manufacturer may request a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied.

(m) After the Administrator suspends or revokes a certificate of conformity pursuant to this section or notifies a manufacturer of his intent to suspend, revoke or void a certificate of conformity under paragraph §86.087–30(e), and prior to the commencement of a hearing under §86.1014–84, if the manufacturer demonstrates to the Administrator's satisfaction that the decision

to suspend, revoke or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

(n) To permit a manufacturer to avoid storing non-test engines or vehicles when conducting an audit of a configuration subsequent to suspension or revocation of the certificate of conformity for that configuration resulting from failure of an SEA, it may request that the Administrator conditionally reinstate the certificate for that configuration. The Administrator may reinstate the certificate subject to the condition that the manufacturer consents to recall all engines or vehicles of that configuration produced from the time the certificate is conditionally reinstated if the configuration fails the subsequent audit at the level of the standard and to remedy any nonconformity at no expense to the owner.

[45 FR 63772, Sept. 25, 1980, as amended at 48 FR 52209, Nov. 16, 1983; 50 FR 35387, Aug. 30, 1985]

§86.1012–97 Suspension and revocation of certificates of conformity.

(a) The certificate of conformity is immediately suspended with respect to any engine or vehicle failing pursuant to §86.1010(b) effective from the time that testing of that engine or vehicle is completed.

(b)(1) *Selective Enforcement Audits.* The Administrator may suspend the certificate of conformity for a configuration that does not pass a Selective Enforcement Audit pursuant to §86.1010(c) based on the first test, or all tests, conducted on each engine or vehicle. This suspension will not occur before ten days after failure to pass the audit.

(2) *California Assembly-Line Quality Audit Testing.* The Administrator may suspend the certificate of conformity for a 50-state engine family or configuration tested in accordance with procedures prescribed under §86.1008 that the Executive Officer has determined to be in non-compliance with one or more applicable pollutants based on Chapter 1 or Chapter 2 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996), if the results of vehicle testing conducted by the manufacturer do not meet the acceptable quality level criteria pursuant to §86.1010. The California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996) are incorporated by reference (see §86.1). A vehicle that is tested by the manufacturer in accordance with procedures prescribed under §86.1008 and determined to be a failing vehicle pursuant to Chapter 1 or Chapter 2 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996) will be treated as a failed vehicle described in §86.1010(b), unless the manufacturer can show that the vehicle would not be considered a failed vehicle using the test procedures specified in §86.1008. This suspension will not occur before ten days after the manufacturer receives written notification that the Administrator has determined the 50-state engine family or configuration exceeds one or more applicable federal standards.

(c)(1) *Selective Enforcement Audits.* If the results of engine or vehicle testing pursuant to the requirements of this subpart indicate that engines or vehicles of a particular configuration produced at more than one plant do not conform to the regulations with respect to which the certificate of conformity was issued, the Administrator may suspend the certificate of conformity with respect to that configuration for engines or vehicles manufactured by the manufacturer in other plants of the manufacturer.

(2) *California Assembly-Line Quality Audit Testing.* If the Administrator determines that the results of vehicle testing pursuant to Chapter 1 or Chapter 2 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996) and the procedures prescribed in §86.1008 indicate the vehicles of a particular 50-state engine family or configuration produced at more than one plant do not conform to applicable regulations with respect to which a certificate of conformity was issued, the Administrator may suspend, pursuant to paragraph (b)(2) of this section, the certificate of conformity with respect to that engine family or configuration for vehicles manufactured by

the manufacturer in other plants of the manufacturer. The California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996) are incorporated by reference (see § 86.1).

(d) The Administrator will notify the manufacturer in writing of any suspension or revocation of a certificate of conformity in whole or in part: Except, that the certificate is immediately suspended with respect to any failed engines or vehicles as provided for in paragraph (a) of this section.

(e)(1) *Selective Enforcement Audits.* The Administrator may revoke a certificate of conformity for a configuration when the certificate has been suspended pursuant to paragraph (b)(1) or (c)(1) of this section if the proposed remedy for the nonconformity, as reported by the manufacturer to the Administrator is one requiring a design change(s) to the engine and/or emission control system as described in the Application for Certification of the affected configuration.

(2) *California Assembly-Line Quality Audit Testing.* The Administrator may revoke a certificate of conformity for an engine family or configuration when the certificate has been suspended pursuant to paragraph (b)(2) or (c)(2) of this section if the proposed remedy for the nonconformity, as reported by the manufacturer to the Executive Officer and/or the Administrator, is one requiring a design change(s) to the engine and/or emission control system as described in the Application for Certification of the affected engine family or configuration.

(f) Once a certificate has been suspended for a failed engine or vehicle as provided for in paragraph (a) of this section, the manufacturer must take the following actions:

(1) Before the certificate is reinstated for that failed engine or vehicle—

(i) Remedy the nonconformity; and

(ii) Demonstrate that the engine or vehicle's final deteriorated test results conform to the applicable emission standards or family particulate emission limits, as defined in this part 86 by retesting the engine or vehicle in accordance with the requirements of this subpart.

(2) Submit a written report to the Administrator within thirty days after successful completion of testing on the failed engine or vehicle, which contains a description of the remedy and test results for the engine or vehicle in addition to other information that may be required by this subpart.

(g) Once a certificate has been suspended pursuant to paragraph (b) or (c) of this section, the manufacturer must take the following actions before the Administrator will consider reinstating such certificate:

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the vehicles, describes the proposed remedy, including a description of any proposed quality control and/or quality assurance measures to be taken by the manufacturer to prevent the future occurrence of the problem, and states the date on which the remedies will be implemented.

(2) Demonstrate that the engine family or configuration for which the certificate of conformity has been suspended does in fact comply with the requirements of this subpart by testing engines or vehicles selected from normal production runs of that engine family or configuration at the plant(s) or the facilities specified by the Administrator, in accordance with:

(i) The conditions specified in the initial test order pursuant to § 86.1003 for a configuration suspended pursuant to paragraph (b)(1) or (c)(1) of this section; or

(ii) The conditions specified in a test order pursuant to § 86.1003 for an engine family or configuration suspended pursuant to paragraph (b)(2) or (c)(2) of this section.

(3) If the Administrator has not revoked the certificate pursuant to paragraph (e) of this section and if the manufacturer elects to continue testing individual engines or vehicles after suspension of a certificate, the certificate is reinstated for any engine or vehicle actually determined to have its final deteriorated test results in conformance with the applicable standards through testing in accordance with the applicable test procedures.

(4) In cases where the Administrator has suspended a certificate of conformity for a 50-state engine family or configuration pursuant to paragraph (b)(2) or (c)(2) of this section, manufacturers may request in writing that the Administrator reinstate the certificate of an engine family or configuration when, in lieu of the actions described in paragraphs (g) (1) and (2) of this section, the manufacturer has complied with Chapter 3 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996), provided an Executive Order is in place for the engine family or configuration. The California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996) are incorporated by reference (see §86.1).

(h) Once a certificate for a failed engine family or configuration has been revoked under paragraph (e) (1) or (2) of this section and the manufacturer desires to introduce into commerce a modified version of that engine family or configuration the following actions will be taken before the Administrator may issue a certificate for the new engine family or configuration:

(1) If the Administrator determines that the proposed change(s) in engine or vehicle design may have an effect on emission performance deterioration and/or fuel economy, he/she shall notify the manufacturer within 5 working days after receipt of the report in paragraph (g)(1) of this section or after receipt of information pursuant to paragraph (g)(4) of this section whether subsequent testing under this subpart will be sufficient to evaluate the proposed change(s) or whether additional testing will be required.

(2) After implementing the change(s) intended to remedy the nonconformity, the manufacturer shall demonstrate:

(i) If the certificate was revoked pursuant to paragraph (e)(1) of this section, that the modified configuration does in fact conform with the requirements of this subpart by testing engines or vehicles selected from normal production runs of that modified configuration in accordance with the conditions specified in the initial test order pursuant to §86.1003. The Administrator shall consider this testing to satisfy the testing requirements of §86.079–32 or §86.079–33 if the Administrator had so notified the manufacturer. If the subsequent testing results in a pass decision pursuant to the criteria in §86.1010(c), the Administrator shall reissue or amend the certificate, if necessary, to include that configuration: *Provided*, that the manufacturer has satisfied the testing requirements specified in paragraph (h)(1) of this section. If the subsequent audit results in a fail decision pursuant to the criteria in §86.1010(c), the revocation remains in effect. Any design change approvals under this subpart are limited to the modification of the configuration specified by the test order.

(ii) If the certificate was revoked pursuant to paragraph (e)(2) of this section, that the modified engine family or configuration does in fact conform with the requirements of this subpart by testing vehicles selected from normal production runs of that modified engine family or configuration in accordance with the conditions specified in a test order pursuant to §86.1003. The Administrator shall consider this testing to satisfy the testing requirements of §86.079–32 or §86.079–33 if the Administrator had so notified the manufacturer. If the subsequent testing results in a pass decision pursuant to §86.1010(c), the Administrator shall reissue or amend the certificate as necessary: *Provided*, that the manufacturer has satisfied the testing requirements specified in paragraph (h)(1) of this section. If the subsequent testing results in a fail decision pursuant to §86.1010(c), the revocation remains in effect. Any design change approvals under this subpart are limited to the modification of the engine family or configuration specified by the test order.

(3) In cases where the Administrator has revoked a certificate of conformity for a 50-state engine family or configuration pursuant to paragraph (e)(2) of this section, manufacturers may request in writing that the Administrator reissue the certificate for an engine family or configuration when, in lieu of the actions described in paragraphs (h) (1) and (2) of this section, the manufacturer has complied with Chapter 3 of the California Regulatory

Requirements Applicable to the National Low Emission Vehicle Program (October, 1996), provided an Executive Order is in place for the engine family or configuration. The California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996) are incorporated by reference (see § 86.1).

(i) through (k) [Reserved]

(l) At any time subsequent to an initial suspension of a certificate of conformity for a test engine or vehicle pursuant to paragraph (a) of this section, but not later than fifteen (15) days or such other period as may be allowed by the Administrator after notification of the Administrator's decision to suspend or revoke a certificate of conformity in whole or in part pursuant to paragraphs (b), (c), (d), (e), or (h) of this section, a manufacturer may request a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied.

(m) After the Administrator suspends or revokes a certificate of conformity pursuant to this section or notifies a manufacturer of his intent to suspend, revoke or void a certificate of conformity under paragraph § 86.087–30(e), and prior to the commencement of a hearing under § 86.1014, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend, revoke or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

(n) To permit a manufacturer to avoid storing non-test engines or vehicles when conducting testing of an engine family or configuration subsequent to suspension or revocation of the certificate of conformity for that engine family or configuration pursuant to paragraph (b), (c), or (e) of this section, the manufacturer may request that the Administrator conditionally reinstate the certificate for that engine family or configuration. The Administrator may reinstate the certificate subject to the condition that the manufacturer consents to recall all engines or vehicles of that engine family or configuration produced from the time the certificate is conditionally reinstated if the engine family or configuration fails the subsequent testing and to remedy any nonconformity at no expense to the owner.

[62 FR 31240, June 6, 1997]

§ 86.1014–84 Hearings on suspension, revocation and voiding of certificate of conformity.

(a) *Applicability.* The procedures prescribed by this section apply whenever a manufacturer requests a hearing pursuant to § 86.087–30 (e)(6)(i), § 86.087–30(e)(7), or § 86.1012–84(1).

(b) *Definitions.* The following definitions are applicable to this section:

(1) *Hearing Clerk* shall mean the Hearing Clerk of the Environmental Protection Agency.

(2) *Manufacturer* means a manufacturer contesting a suspension or revocation order directed at the manufacturer.

(3) *Party* means the Agency and the manufacturer.

(4) *Presiding Officer* means an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (see also 5 CFR part 930 as amended).

(5) *Environmental Appeals Board* shall mean the Board within the Agency described in § 1.25 of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under this subpart. Appeals directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this subpart to the Administrator for decision when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

(c) *Request for public hearing.* (1) If the manufacturer disagrees with the Administrator's decision to suspend, revoke or void a certificate or disputes the basis for an automatic suspension pursuant to § 86.1012–84(a), the manufacturer may request a public hearing

as described in this section. The manufacturer shall file with the Administrator a request for this hearing not later than fifteen (15) days after the Administrator's notification of his decision to suspend or revoke unless otherwise specified by the Administrator. The manufacturer shall simultaneously serve two copies of this request upon the Director of the Manufacturers Operations Division and file two copies with the Hearing Clerk. Failure of the manufacturer to request a hearing within the time provided constitutes a waiver of the right to a hearing. Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, in his discretion and for good cause shown, grant the manufacturer a hearing to contest the suspension or revocation.

(2) A manufacturer shall include in the request for a public hearing—

(i) A statement as to which engine or vehicle configuration is to be the subject of the hearing;

(ii) A concise statement of the issues to be raised by the manufacturer at the hearing: *Provided, however,* That in the case of the hearing requested under §86.1012–84(1), the hearing is restricted to the following issues:

(A) Whether tests have been properly conducted, specifically, Whether the tests were conducted in accordance with applicable regulations under this part and whether test equipment was properly calibrated and functioning; and

(B) Whether sampling plans have been properly applied, specifically, whether sampling procedures specified in appendix X were followed and whether there exists a basis for distinguishing engines or vehicles produced at plants other than the one from which engines or vehicles were selected for testing which would invalidate the Administrator's decision under §86.1012–84(e);

(iii) A statement specifying reasons why the manufacturer believes it will prevail on the merits of each of the issues raised; and

(iv) A summary of the evidence which supports the manufacturer's position on each of the issues raised.

(3) A copy of all requests for public hearings will be kept on file in the Office of the Hearing Clerk and will be made available to the public during Agency business hours.

(d) *Summary decision.* (1) In the case of a hearing requested under §86.1012–84(1), when it clearly appears from the data and other information contained in the request for a hearing that there is no genuine and substantial question of fact with respect to the issues specified in §86.1014–84(c)(2)(ii), the Administrator shall enter an order denying the request for a hearing and reaffirming the original decision to suspend or revoke a certificate of conformity, if this decision has been made pursuant to §86.1012–84(g) at any time prior to the decision to deny the request for a hearing.

(2) In the case of a hearing requested under §86.087–30(e)(6)(i), to challenge a proposed suspension of a certificate of conformity for the reasons specified in §86.087–30(e)(1)(i) or (e)(1)(ii), when it clearly appears from the data and other information contained in the request for the hearing that there is no genuine and substantial question of fact with respect to the issue of whether the refusal to comply with the provisions of a test order or any other requirement of §86.1003–84 was caused by conditions and circumstances outside the control of the manufacturer, the Administrator shall enter an order denying the request for a hearing and suspending the certificate of conformity.

(3) Any order issued under paragraph (d) (1) or (2) of this section has the force and effect of a final decision of the Administrator, as issued pursuant to paragraph (w)(4) of this section.

(4) If the Administrator determines that a genuine and substantial question of fact does exist with respect to any of the issues referred to in paragraphs (d) (1) and (2) of this section, he shall grant the request for a hearing and publish a notice of public hearing in accordance with paragraph (h) of this section.

(e) *Filing and service.* (1) An original and two copies of all documents or papers required or permitted to be filed pursuant to this section must be filed with the Hearing Clerk. Filing is considered timely if mailed, as determined by the postmark, to the Hearing Clerk

within the time allowed by this section. If filing is to be accomplished by mailing, the documents must be sent to the address set forth in the notice of public hearing as described in paragraph (h) of this section.

(2) To the maximum extent possible, testimony will be presented in written form. Copies of written testimony will be served upon all parties as soon as practicable prior to the start of the hearing. A certificate of service will be provided on or accompany each document or paper filed with the Hearing Clerk. Documents to be served upon the Director of the Manufacturers Operations Division must be sent by registered mail to:

Director, Manufacturers Operations Division, U.S. Environmental Protection Agency, EN–340, 401 M Street S.W., Washington, D.C. 20460.

Service by registered mail is complete upon mailing.

(f) *Time.* (1) In computing any period of time prescribed or allowed by this section, except as otherwise provided, the day of the act or event from which the designated period of time begins to run is not included. Saturdays, Sundays, and Federal legal holidays are included in computing the period allowed for the filing of any document or paper, except that when the period expires on a Saturday, Sunday, or Federal legal holiday, the period is extended to include the next following business day.

(2) A prescribed period of time within which a party is required or permitted to do an act is computed from the time of service, except that when service is accomplished by mail, three days will be added to the prescribed period.

(g) *Consolidation.* The Administrator or the Presiding Officer in his discretion may consolidate two or more proceedings to be held under this section for the purpose of resolving one or more issues whenever it appears that consolidation will expedite or simplify consideration of these issues. Consolidation does not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(h) *Notice of public hearings.* Notice of a public hearing under this section is given by publication in the FEDERAL REGISTER and by such other means as the Administrator finds appropriate to provide notice to the public. To the extent possible hearings under this section will be scheduled to commence within fourteen (14) days of receipt of the application in paragraph (c) of this section.

(i) *Amicus curiae.* Persons not parties to the proceeding wishing to file briefs may do so by leave of the Presiding Officer granted on motion. A motion for leave must identify the interest of the applicant and state the reasons why the proposed amicus brief is desirable.

(j) *Presiding Officer.* The Presiding Officer shall conduct a fair and impartial hearing in accordance with 5 U.S.C. sections 554, 556 and 557 and take all necessary action to avoid delay in the disposition of the proceedings and to maintain order. He shall have all power consistent with Agency rule and with the Administrative Procedure Act necessary to this end, including the power:

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and exclude irrelevant or repetitious material;

(3) To regulate the course of the hearings and the conduct of the parties and their counsel therein;

(4) To hold conferences for simplification of the issues or any other proper purpose;

(5) To consider and rule upon all procedural and other motions appropriate to these proceedings;

(6) To require the submission of direct testimony in written form with or without affidavit whenever, in his opinion, oral testimony is not necessary for full and true disclosure of the facts;

(7) To enforce agreements and orders requiring access as authorized by law;

(8) To require the filing of briefs on any matter on which he is required to rule;

(9) To require any party or any witness, during the course of the hearing, to state his position on any issue;

(10) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(11) To make decisions or recommend decisions to resolve the disputed issues on the record of the hearing; and

(12) To issue, upon good cause shown, protective orders as described in paragraph (n) of this section.

(k) *Conferences.* (1) The Presiding Officer may hold conferences prior to or during any hearing. The Presiding Officer shall direct the Hearing Clerk to notify all parties of the time and location of any conference. At the discretion of the Presiding Officer, persons other than parties may attend. At a conference the Presiding Officer may:

(i) Obtain stipulations and admissions, receive requests, order depositions to be taken, identify disputed issues of fact and law, and require or allow the submission of written testimony from any witness or party;

(ii) Set a hearing schedule for as many of the following as he considers necessary:

(A) Oral and written statements;

(B) Submission of written direct testimony as required or authorized by the Presiding Officer;

(C) Oral direct and cross-examination of a witness where necessary as prescribed in paragraph (p) of this section; and

(D) Oral argument, if appropriate;

(iii) Identify matters of which official notice may be taken;

(iv) Consider limitation of the number of expert and other witnesses;

(v) Consider the procedure to be followed at the hearing; and

(vi) Consider any other matter that may expedite the hearing or aid in the disposition of the issue.

(2) The Presiding Officer shall summarize in writing the results of any conference, including all stipulations, if not transcribed, and shall make the summary part of the record.

(l) *Primary discovery (exchange of witness lists and documents).* (1) At a prehearing conference or within some reasonable time set by the Presiding Officer prior to the hearing, each party shall make available to the other parties the names of the expert and other witnesses the party expects to call, together with a brief summary of their expected testimony and a list of all documents and exhibits which the party expects to introduce into evidence. Thereafter, witnesses, documents, or exhibits may be added and summaries of expected testimony amended upon motion by a party.

(2) The Presiding Officer, may, upon motion by a party or other person, and for good cause shown, by order:

(i) Restrict or defer disclosure by a party of the name of a witness or a narrative summary of the expected testimony of a witness; and

(ii) Prescribe other appropriate measures to protect a witness.

(3) Any party affected by an action in paragraph (l)(2) of this section shall have an adequate opportunity, once he learns the name of a witness and obtains the narrative summary of his expected testimony, to prepare for the presentation of his case.

(m) *Other discovery.* (1) Except as provided by paragraph (m)(1) of this section, further discovery, under this paragraph is permitted only upon determination by the Presiding Officer:

(i) That this discovery will not in any way unreasonably delay the proceeding;

(ii) That the information to be obtained is not obtainable voluntarily; and

(iii) That the information has significant probative value. The Presiding Officer shall be guided by the procedures set forth in the Federal Rules of Civil Procedure, where practicable, and the precedents thereunder, except that no discovery will be undertaken except upon order of the Presiding Officer or upon agreement of the parties.

(2) The Presiding Officer shall order depositions upon oral questions only upon a showing of good cause and upon a finding that:

(i) The information sought cannot be obtained by alternative methods; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(3) Any party to the proceeding desiring an order of discovery shall make a motion or motions therefor. The motion must include:

(i) The circumstances warranting the taking of the discovery;

(ii) The nature of the information expected to be discovered; and

(iii) The proposed time and place where it will be taken. If the Presiding

Officer determines the motion should be granted, he shall issue an order for the taking of the discovery together with the conditions and terms thereof.

(4) Failure to comply with an order issued pursuant to this paragraph may lead to the inference that the information to be discovered would be adverse to the person or party from whom the information was sought.

(n) *Protective orders, in camera proceedings.* (1) Upon motion by a part or by the person from whom discovery is sought, and upon a showing by the movant that the disclosure of the information to be discovered, or a particular part thereof (other than emission data), would result in methods or processes entitled to protection as trade secrets of the person being divulged, the Presiding Officer may enter a protective order with respect to this material. Any protective order will contain terms governing the treatment of the information which are appropriate under the circumstances to prevent disclosure outside the hearing: *Provided,* That the order states that the material will be filed separately from other evidence and exhibits in the hearing. Disclosure is limited to parties to the hearing, their counsel and relevant technical consultants, and authorized representatives of the United States concerned with carrying out the Act. Except in the case of the government, disclosure may be limited to counsel for parties who shall not disclose such information to the parties themselves. Except in the case of the government, disclosure to a party or his counsel is conditioned on execution of a sworn statement that no disclosure of the information will be made to persons not entitled to receive it under the terms of the protective order. (This provision is not necessary where government employees are concerned because disclosure by them is subject to the terms of 18 U.S.C. 1905.)

(2)(i) A party or person seeking a protective order may be permitted to make all or part of the required showing in camera. A record will be made of the in camera proceedings. If the Presiding Officer enters a protective order following a showing in camera, the record of the showing will be sealed and preserved and made available to the Agency or court in the event of appeal.

(ii) Attendance at any in camera proceeding may be limited to the Presiding Officer, the Agency, and the person or party seeking the protective order.

(3) Any party, subject to the terms and conditions of any protective order issues pursuant to paragraph (n)(1) of this section, desiring for the presentation of his case to make use of any in camera documents or testimony, shall make application to the Presiding Officer by motion setting forth the justification therefor. The Presiding Officer, in granting this motion, shall enter an order protecting the rights of the affected persons and parties and preventing unnecessary disclosure of this information, including the presentation of the information and oral testimony and cross-examination concerning it in executive session, as in his discretion is necessary and practicable.

(4) In the submittal of proposed findings, briefs, or other papers, counsel for all parties shall make a good faith attempt to refrain from disclosing the specific details of in camera documents and testimony. This shall not preclude references in these proposed findings, briefs, or other papers to the documents or testimony, including generalized statements based on their contents. To the extent that counsel considers it necessary to include specific details in their presentations, these details will be incorporated in separate proposed findings, briefs, or other paper marked ''confidential'', and wil become part of the in camera record.

(o) *Motions.* (1) All motions, except those made orally during the course of the hearing, must be in writing and state with particularity the grounds therefor, set forth the relief or order sought, and be filed with the Hearing Clerk and served upon all parties.

(2) Within the time fixed by the Environmental Appeals Board or the Presiding Officer, as appropriate, any party may serve and file an answer to the motion. The movant shall, if requested by the Environmental Appeals Board or the Presiding Officer, as appropriate, serve and file reply papers within the time set by the request.

(3) The Presiding Officer shall rule upon all motions filed or made prior to the filing of his decision or accelerated decision, as appropriate. The Environmental Appeals Board shall rule upon all motions filed prior to the appointment of a Presiding Officer and all motions filed after the filing of the decision of the Presiding Officer or accelerated decision. Oral argument of motions will be permitted only if the Presiding Officer or the Environmental Appeals Board, as appropriate, considers it necessary.

(p) *Evidence.* (1) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, consitute the record. Immaterial or irrelevant part of an admissible document will be segregated and excluded so far as practicable. Documents or parts thereof subject to a protective order under pargarph (n) of this section wil be segregated. Evidence may be received at the hearing even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence will be determined by its reliability and probative value.

(2) The Presiding Officer shall allow the parties to examine and cross-examine a witness to the extent that this examination and cross-examination is necessary for a full and true disclosure of the facts.

(3) Ruling of the Presiding Officer on the admissibility of evidence, the propriety of examination and cross-examination, and other procedural matters will appear in the record.

(4) Parties shall automatically be presumed to have taken exception to an adverse ruling.

(q) *Record.* (1) Hearings will be stenographically reported and transcribed and the original transcripts will be part of the record and the sole official transcript. Copies of the record will be filed with the Hearing Clerk and made available during Agency business hours for public inspection. Any thereof, except as provided in paragraph (n) of this section, shall be entitled to the same upon payment of the cost thereof.

(2) The official transcripts and exhibits, together with all paper and requests filed in the proceeding, constitute the record.

(r) *Proposed findings, conclusions.* (1) Within four (4) days of the close of the reception of evidence, or within such longer time as the Presiding Officer may fix, any party may submit for the consideration of the Presiding Officer proposed findings of fact, conclusions of law, and proposed order, together with reasons therefor and briefs in support thereof. These proposals will be in writing, be served upon all parties, and contain adequate references to the record and authorities relied upon.

(2) The record will show the Presiding Officer's ruling on the proposed findings and conclusions except when his order disposing of the proceeding otherwise informs the parties of the action taken by him thereon.

(s) *Decision of the Presiding Officer.* (1) Unless extended by the Environmental Appeals Board, the Presiding Officer shall issue and file with the Hearing Clerk his decision within fourteen (14) days (or within seven (7) days in the case of a hearing requested under § 86.1012–84(1)) after the period for filing proposed findings as provided for in paragraph (r) of this section has expired.

(2) The Presiding Officer's decision shall become the decision of the Environmental Appeals Board:

(i) When no notice of intention to appeal as described in paragraphs (t) and (u) of this section is filed, ten (10) days after issuance thereof, unless in the interim the Environmental Appeals Board shall have acted to review or stay the effective date of the decision; or

(ii) When a notice of intention to appeal is filed but the appeal is not perfected as required by paragraphs (t) or (u) of this section, five (5) days after the period allowed for perfection of an appeal has expired unless within that five (5) day period, the Environmental Appeals Board shall have acted to review or stay the effective date of the decision.

(3) The Presiding Officer's decision must include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact or law presented on the record and an appropriate rule or order. The decision must be supported

by substantial evidence and based upon a consideration of the whole record.

(4) At any time prior to the issuance of his decision, the Presiding Officer may reopen the proceeding for the reception of further evidence. Except for the correction of clerical errors, the jurisdiction of the Presiding Officer is terminated upon the issuance of his decision.

(t) *Appeal from the decision of the Presiding Officer.* (1) Any party to a proceeding may appeal the Presiding Officer's decision to the Environmental Appeals Board; *Provided,* That within ten (10) days after issuance of the Presiding Officer's decision the party files a notice of intention to appeal and an appeal brief within twenty (20) days of the decision.

(2) When an appeal is taken from the decision of the Presiding Officer, any party may file a brief with respect to the appeal. The party shall file the brief within fifteen (15) days of the date of the filing of the appellant's brief.

(3) Any brief filed pursuant to this paragraph will contain, in the order indicated, the following:

(i) A subject index of the matter in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto:

(ii) A specification of the issues intended to be urged; provided, however, that in the case of a hearing requested under §86.1012–84(l), the brief will be restricted to the issues specified in paragraph (c)(2)(ii) of this section;

(iii) The argument presenting clearly the points of fact and law relied upon in support of the position taken on each issue, with specific page references to the record and the legal or other material relied upon; and

(iv) A proposed order for the Environmental Appeals Board's consideration if different from the order contained in the Presiding Officer's decision.

(4) No brief in excess of 40 pages will be filed without leave of the Environmental Appeals Board.

(5) The Environmental Appeals Board may allow oral argument.

(u) *Summary appeal.* (1) In the case of a hearing requested under §86.1012–84(l), any appeal taken from the decision of the Presiding Officer will be conducted under this subsection.

(2) Any party to the proceeding may appeal the Presiding Officer's decision to the Environmental Appeals Board by filing a notice of appeal within ten (10) days.

(3) The notice of appeal must be in the form of a brief and conform to the requirements of paragraph (t)(3) of this section.

(4) Within ten (10) days after a notice of appeal from the decision of the Presiding Officer is filed under this paragraph, any party may file a brief with respect to that appeal.

(5) No brief in excess of fifteen (15) pages will be filed without leave of the Environmental Appeals Board.

(v) *Review of the Presiding Officer's decision in the absence of appeal.* (1) If after the expiration of the period for taking an appeal as provided for by paragraph (t) or (u) of this section, no notice of intention to appeal the decision of the Presiding Officer has been filed, or if filed, not perfected, the Hearing Clerk shall so notify the Environmental Appeals Board.

(2) The Environmental Appeals Board, upon receipt of notice from the Hearing Clerk that no notice of intention to appeal the decision of the Presiding Officer has been filed, or if filed, not perfected pursuant to paragraph (t) or (u) of this section, may, on its own motion, within the time limits specified in paragraph (s)(2) of this section, review the decision of the Presiding Officer. Notice of the intention of the Environmental Appeals Board to review the decision of the Presiding Officer shall be given to all parties and shall set forth the scope of such review and the issues to be considered and shall make provision for filing of briefs.

(w) *Decision of appeal or review.* (1) Upon appeal from or review of the Presiding Officer's decision, the Environmental Appeals Board shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and in addition shall, to the extent necessary or desirable, exercise all the powers which it could have exercised if it had presided at the hearing.

(2) In rendering its decision, the Environmental Appeals Board shall adopt,

modify or set aside the findings, conclusions, and order contained in the decision of the Presiding Officer and shall set forth in its decision a statement of the reasons or basis for its action.

(3) In those cases where the Environmental Appeals Board determines that it should have further information or additional views of the parties as to the form and content of the rule or order to be issued, the Environmental Appeals Board, in its discretion, may withhold final action pending the receipt of such additional information or views, or may remand the case to the Presiding Officer.

(4) Any decision rendered under this paragraph which completes disposition of a case constitutes a final decision of the Environmental Appeals Board.

(x) *Reconsideration.* (1) Within twenty (20) days after issuance of the Environmental Appeals Board's decision, any party may file with the Environmental Appeals Board a petition for reconsideration of such decision, setting forth the relief desired and the grounds in support thereof. Any petition filed under this subsection must be confined to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the Presiding Officer or the Environmental Appeals Board; *Provided, however,* That in the case of a hearing requested under § 86.1012–84(1) such new questions shall be limited to the issues specified in paragraph (c)(2)(ii) of this section.

(2) Any party desiring to oppose this petition shall file an answer thereto within ten (10) days after the filing of the petition. The filing of a petition for reconsideration shall not operate to stay the effective date of the decision or order or to toll the running of any statutory time period affecting such decision or order unless specifically so ordered by the Environmental Appeals Board.

(y) *Accelerated decision, dismissal.* (1) The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the Agency or the manufacturer as to all or any part of the proceeding, without further hearing or upon limited additional evidence such as affidavits which he may require, or dismiss any party with prejudice, for any of the following reasons:

(i) Failure to state a claim upon which relief can be granted, or direct or collateral estoppel;

(ii) The lack of any genuine issue of material fact, causing a party to be entitled to judgment as a matter of law; or

(iii) Such other reasons as are just, including specifically failure to obey a procedural order of the Presiding Officer.

(2) If, under this subsection, an accelerated decision is issued as to all the issues and claims joined in the proceeding, the decision will be treated for the purposes of these procedures as the decision of the Presiding Officer as provided in paragraph (s) of this section.

(3) If, under this subsection, judgment is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. He shall thereupon issue an order specifying the facts which appear without substantial controversy, and the issues and claims upon which the hearing will proceed.

(z) *Conclusion of hearing.* (1) If, after the expiration of the period for taking an appeal as provided for by paragraphs (t) and (u) of this section, no appeal has been taken from the Presiding Officer's decision, and after the expiration of the period for review by the Environmental Appeals Board on its own motion as provided for by paragraph (v) of this section, the Environmental Appeals Board does not move to review such decision, the hearing is considered ended at the expiration of all periods allowed for the appeal and review.

(2) If an appeal of the Presiding Officer's decision is taken pursuant to paragraphs (t) and (u) of this section, or if, in the absence of this appeal, the Environmental Appeals Board moves to review the decision of the Presiding Officer pursuant to paragraph (v) of this section, the hearing is considered ended upon rendering of a final decision by the Environmental Appeals Board.

(aa) *Judicial review.* (1) The Administrator shall designate the General

Counsel, Environmental Protection Agency as the officer upon whom copy of any petition for judicial review must be served. This officer shall be responsible for filing in the court the record of which the order of the Environmental Appeals Board is based.

(2) Before forwarding the record to the court, the Agency shall advise the petitioner of costs of preparing it and as soon as payment to cover fees is made, shall forward the record to the court.

[45 FR 63772, Sept. 25, 1980, as amended at 50 FR 35387, Aug. 30, 1985; 57 FR 5332, Feb. 13, 1992]

§ 86.1014–97 Hearings on suspension, revocation and voiding of certificates of conformity.

Section 86.1014–97 includes text that specifies requirements that differ from those specified in § 86.1014–84. Where a paragraph in § 86.1014–84 is identical and applicable to § 86.1014–97, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1014–84''.

(a) through (c)(2)(ii) introductory text [Reserved]. For guidance see § 86.1014–84.

(c)(2)(ii)(A) Whether tests have been properly conducted, specifically, whether the tests were conducted in accordance with applicable regulations and whether test equipment was properly calibrated and functioning; and

(c)(2)(ii) (B) through (aa) [Reserved]. For guidance see § 86.1014–84.

[62 FR 31241, June 6, 1997]

§ 86.1015 Treatment of confidential information.

(a) Any manufacturer may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR part 2, subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this subpart is confidential, a manufacturer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Environmental Appeals Board only to the extent and by means of the procedures set forth in part 2, subpart B, of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter, in accordance with 40 CFR 2.204(c)(2)(i)(A).

[50 FR 34798, Aug. 27, 1985, as amended at 57 FR 5333, Feb. 13, 1992; 57 FR 30657, July 10, 1992]